



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga January 30, 2004

JUDGMENT

in the name of the Republic of Latvia

in case No. 2003 – 20 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Ilze Skultāne, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins and Andrejs Lepse

on the basis of the constitutional claim by the Riga Dome (Council)

pursuant to Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 7 of the first part) and 28¹ of the Constitutional Court Law

holding the proceedings in writing

on January 6, 2004 at the Court session reviewed the case

”On the Compliance of Article 10, Items 3 and 4 of Article 11, Article 14 and Items 6 and 8 of the Transitional Provisions of the Law ”On Preservation and Protection of the Riga Historical Centre” with Articles 1 and 58 of the Republic of Latvia Satversme (Constitution)””.

The establishing part

1. On May 29, 2003 the Saeima passed the Law ”On Preservation and Protection of the Riga Historical Centre”, which took effect on June 25, 2003.

Article 10 of this Law determines:

” (1) To stimulate co-operation of institutions and adoption of decisions on issues, which concern preservation, protection and development of the Riga historical centre and its zone, the Council for Preservation and Development of the Riga Historical Centre (henceforth – the Council) shall be formed, the body of which (on the proposal of the Minister of Culture) as well as the Statutes are confirmed by the Cabinet of Ministers.

(2) The Council is a public consultative institution, which consists of ten members:

- 1) the Head of the State Inspection for Heritage Protection;
- 2) an official of the State Inspection for Heritage Protection, who is responsible for registration and estimate of the heritage;
- 3) archeologist or architect of the State Inspection for Heritage Protection;
- 4) the Head of the Riga Dome institution, which is responsible for heritage protection;
- 5) an official of the Riga Dome institution, which is responsible for the development of the Riga historical centre;
- 6) an official of the Riga Dome institution, which is responsible for urban planning of the city of Riga;
- 7) the specialist, invited by the Minister of Culture;
- 8) the representative of the Latvian National Commission;
- 9) the representative of the Latvian Union of the Architects;
- 10) the representative of the Ministry of Regional Development and Local Government Affairs.

(3) The body of the Council shall be confirmed for the period of three years. The Chairperson of the Council is elected from among the members of the Council.

(4) The organizing and technical activities of the Council shall be ensured by the State Inspection for Heritage Protection.

Item 3 of Article 11 of the Law determines that the following activities are within the competence of the Council: ”assessment of projects (conceptions) on the construction of new objects, reconstruction or destroying of buildings or structures as well as erecting or renovation of monuments in the Riga historical centre and its protection zone as well as expressing conclusions to the State Inspection for Heritage Protection and to the Riga Dome Institution, which is responsible for the heritage protection, on the influence of the potential projects on the environment of the archeological midden, if any of the above institutions has requested to do so. When taking the decision on any particular issue, the conclusion of the Council shall be taken into consideration”. In its turn Article 4 of the Article determines that the Council voices its decision (conclusion) ”in

case if the State Inspection for Heritage Protection and the Riga Dome institution, which is responsible for heritage protection, when considering the issue on preservation, protection or development of the Riga historical centre and its protection zone have different viewpoints and if any of the above institutions has required it. When reaching the decision in the relevant issue, the conclusion of the Council shall be taken into consideration”.

In conformity with Article 14 of the Law ”building of new constructions in the public space of the Riga historical centre shall be permissible only after examining drafts elaborated by architects for open competitions after their public assessment and discussion by the Council and coordination with the State Inspection for Heritage Protection under the procedure, set by the normative acts.”

In its turn Item 6 of the Transitional Provisions of the Law on the Preservation and Protection of Riga Historical Centre determines:

” decisions on projects for building new objects, demolition of historical buildings, reconstruction of buildings and structures as well as erection and reconstruction of monuments (henceforth this and Item 7 of the Transitional Provisions – the projects) in the Riga historical centre, to which prohibitions of Item 5 of the Transitional Provisions are not attributed, shall be taken by the Council till the moment of the urban territorial planning of the Riga historic centre taking effect. The Council experiences the right of confirming the construction project or requiring the necessary corrections (amendments) and submission of the documents on the project for repeated examining by the Council as well as rejecting the project. Projects, submitted to the Council shall be reviewed at least once in a month. The Council takes the decisions with the majority vote not later than 30 days after the submission of the documents on the project. The decisions, taken by the Council shall be publicly accessible. If the Council rejects the construction project, its realization is suspended to the time of the territorial planning of the Riga historical centre or the land use plan of the particular block or group of blocks taking effect.”

Item 8 of the Transitional Provisions of the Law determine:

” To the moment of the land use plan of the Riga historical centre taking effect, but in cases, when in accordance with the requirements of the planning of the Riga historical centre the land use plan of the particular block or group of blocks shall be elaborated – to the moment of the above land use plan taking effect, the Council confirms the list of the potential urban planning construction sites, where construction of new objects is admissible only on projects, submitted by architects to open competitions, which have been publicly assessed, examined by the Council and coordinated with the State Inspection of Heritage Protection”.

- 2. The submitter of the claim** – the Riga Dome (henceforth – the Dome) points out that from Article 1 of the Republic of Latvia Satversme (henceforth – the Satversme) follow several principles of a law-based state, inter alia also the separation of power, rule of law and the principle of legitimate trust. The principle of separation of power expresses itself in separation of the state power into legislative, executive and judicial power and it is realized by independent and autonomous institutions. It guarantees balance and mutual control among the institutions and favours moderation of power. The Dome holds that in compliance with Section 8 (the fourth part) of the State Administration Structure Law, the local government when carrying out the duties under their authority act under the supervision of the Cabinet of Ministers.

The Dome stresses that the Saeima has passed the Law on Preservation and Protection of the Riga Historical Centre (henceforth – the Riga Historical Centre Law) contrary to the principles of separation of power and the legitimate trust, contrary to the State Administration Structure Law, contrary to the Law "On Local Authorities" and the European Local Authority Charter as well as contrary to objection of the ministries and the State President. Side by side with passing the above Law the Saeima has envisaged to form a new institution – the Council, which parallel to the Dome and other state institutions will superintendent and take decisions anticipated by Law. Even though Article 10 of the Riga Historical Centre Law determines that the Council is only a consultative public institution, the Dome is of the opinion that the Council has been endowed with the right of passing decisions binding on other persons. Thus by carrying out its functions the Council will pass administrative acts – decisions and conclusions on projects in the construction sector. These decisions are of a binding nature. Thus the Dome holds that the Riga Historical Centre Law restricts the rights and initiative of the municipality in the sector of elaboration of the territorial planning, construction and administrative supervision.

The Dome Holds that formation of the Council is at variance with Article 58 of the Satversme, namely – it does not fit in the organized hierarchic system. As the motivation for the above the Dome mentions that first of all the Council cannot be regarded as a derived public person as neither the form nor the contents of its institutional subordination has been determined, it cannot be regarded as an institution belonging to another branch of the state power. Secondly, accomplishment of the municipal functions, which have been assigned to the Council, is supervised under quite another procedure. Thirdly, the Riga Historical Centre Law does not envisage the right of the persons, who are interested in the process, to appeal against the decisions adopted by the Council, with an exception of the cases anticipated in Item 7 of the Transitional Provisions of the Law.

Even though the Dome acknowledges the fact that the Riga Historical Centre has been included into the List of the World Heritage of the United Nations Educational, Scientific and Cultural Organization (henceforth – UNESCO) and thus the local authority or the legislator experience the right of forming public consultative institutions for the solution of problems, connected with issues of territorial planning and construction, however, then the decisions of the above institutions shall be only recommending.

3. In addition to the viewpoint included in the claim, the Dome explains that the municipality secures the Preservation and Protection of the Riga Historical Centre with the help of the Inspection of the Protection of Riga Heritage. It is the structural unit of the Riga Construction Board of the Dome City Development Department.

As concerns the assignment of the Dome to elaborate the territorial plan of the Riga Historical Centre, the Dome has pointed out that at the present moment elaboration of the Plan for Preservation and Development of the Riga Historical Centre is going on. Initially the Cabinet of Ministers December 5, 2000 Regulations No. 423 "On Territorial Planning" and the Dome September 26, 2000 Decision No. 8883 "On the Commencement of Elaboration of the Plan for Preservation and Development of the Riga Historical Centre" were taken consideration of for the commencement of the work on the plan. The Dome stresses that, when elaborating the territorial planning of the Riga Historical centre the term, determined in Item 2 of the Transitional Provisions of the Riga Historical Centre Law, namely – up to July 1, 2004 has been taken into consideration.

4. **The Saeima** in its written reply expresses the viewpoint that the compliance of the status and competence of the Council shall be reviewed in the context of the whole Law on the Riga Historical centre, especially by taking into consideration the specific situation, because of which adoption of the above Law and formation of the Council were the necessity. In 1983 by the Cabinet of Ministers decision the Riga Historical centre was declared to be the cultural monument of the State importance. Later, on December 6, 1997, following the requests of the State of Latvia President, the Ministry of Culture, the State Inspection for Heritage Protection and other institutions by the UNESCO Decision the Riga Historical centre was included in the List of the World Heritage. The Dome had also expressed its readiness to co-operate with the state institutions in order to further the inclusion of the Riga Historical centre in the List of the World Heritage. Thus since 1997 the Riga Historical centre has received international estimate as the heritage of the world culture, which has a specific and universal value from the

viewpoint of history, art and esthetics and the preservation of which is in the interests of the humanity.

The Saeima points out that on February 17, 1997 it has confirmed the UNESCO 1972 Convention on the Protection of the Cultural and Nature Heritage (henceforth – the Convention) of the World . In accordance with the Convention Latvia has undertaken different obligations to protect the cultural heritage, which can be found in the territory of the State and has undertaken the liabilities of abstaining from such activities, which could endanger the above heritage. The Saeima stresses – even though the Riga Historical centre lies within the administrative territory of the city of Riga, in accordance with the Convention the State of Latvia has undertaken the liabilities and responsibility for the protection of the above territory. Just because of this reason the Saeima has passed the Riga Historical Centre Law, which is one of the legal means for the protection of the Riga Historical centre.

The Saeima reminds that up to this very moment no unified territorial development plan has been elaborated. Only several land use plans for particular territories of the Riga Historical Centre, on which construction projects are suggested, are being elaborated. To the mind of the Saeima construction on these territories takes place chaotically and not by taking public interests into consideration. The Dome Decision No. 1251 "On the Restrictions of Construction Work in the Riga Historical Centre", which was adopted on April 30, 2002 and permits construction without the existence of the general territorial planning favours the above practice. To balance the interests of the economic development of the city of Riga, public interests and the protection of the heritage to the mind of the Saeima it is necessary to elaborate the territorial plan of the Riga historical centre and its protection zone. As there is no plan, the right to utility and development of the real estate are not guaranteed and the preconditions for averting of industrial and environment risks cannot be created. The Saeima stresses that the European Council expert Miriam Goblet has made the same conclusions after her visit to Latvia and has expressed her viewpoint in her December 10, 2001 report "A Specific Plan of Action for Latvia". Thus the priority of the Riga Historical Centre Law is to ensure that the development plan for the Riga historical centre is elaborated and confirmed.

Besides the Saeima points out that when elaborating the plan, both – the international status of the Riga historical centre and the conclusions of the above expert have been taken into consideration. Thus the Saeima holds that a wider range on institutions and the society shall be involved in the process of protection, preservation and further development of the Riga historical centre. When preparing the draft Law for the second reading the joint proposals elaborated by the State Inspection for

Heritage Protection and the Dome specialists of the sector of cultural heritage have been taken into consideration. It can be seen that the Dome had accepted the project of the formation of the Council for supervision of the elaboration of the territorial plan for the Riga historical centre. Besides, from 1997 to 2001 a consulting institution similar to the Council - the Riga Cultural Heritage Coordination Council – was already functioning.

The Saeima does not agree with the viewpoint of the Dome that the Council and the procedure of its formation are unbecomable with the principles of separation of power, legitimate trust and rule of law, incorporated into Article 1 of the Satversme as well as with Article 85 of the Satversme.

The Saeima points out that Article 10 of the Riga Historical Centre Law determines the status and procedure of formation of the Council. In conformity with this Article the Statutes of the Council side by side with the above Article shall determine its duties, functions and competence. Thus the Council – as a public and consulting institution - becomes part of a unified hierarchical system of the State management institutions. By taking into consideration the aim of formation of the Council and its membership, uniform decisions shall be taken in the sector of protection and development of the Riga historical centre and observation of public interests, protection of the cultural monuments shall be secured and the balance between the development interests of the State and the city of Riga shall be ensured.

As concerns Item 3 of Article 11 of the Riga Historical Centre Law, the Saeima points out that the Council experiences the right of expressing conclusions and assessing projects only in case if the State Inspection for Heritage Protection or the relevant Dome institution has requested it. However, when the above request has been expressed, both the State Inspection for heritage protection and the particular Dome institution shall take the conclusion into consideration. If it were not so then there is no motivation for requesting the conclusion. The Saeima has handed in similar arguments as concerns Item 4 of Article 11 of the Riga Historical Centre Law and additionally points out that this Item endows the Council with "the role of arbitrator" in case if the State Inspection for Heritage Protection and the particular Dome institution have different viewpoints on preservation, protection or development of the Riga historical centre. Besides, both Items – 3 and 4 of Article 11 of the Riga Historical Centre Law establish that in disputable cases a joint, collegial conclusion of independent specialists and specialists of different administrative institutions shall be submitted. Thus the balance between different public interests is encouraged.

The Saeima explains that Article 14 of the Riga Historical Centre Law precisely determines that construction of new buildings in the territory of the Riga historical centre shall be coordinated, but it does not envisage that the Council has the right of passing binding decisions with regard to construction projects. The above Article establishes the procedure on ensuring publicity and participation of the society in the process of assessment and coordination of the projects for new buildings as well as secures the demand of coordinating the construction projects with the State Inspection for Heritage Protection. The conclusion of the Council to the State inspection for Heritage protection is only recommending, it expresses an additional viewpoint on the project of a new building. In its turn coordination with the State Inspection for Heritage Protection is binding on the Dome. Thus Article 14 of the Riga Historical Centre Law violates neither the principle of separation of power nor the principle of the State management.

The Saeima points out that Item 6 of the Transitional Provisions of the Law determines one of the temporary functions of the Council, namely, that of accepting the construction project, requiring all the necessary corrections or to reject the project. The second temporary function, namely, the right of confirming under the envisaged procedure the list of places for potential urban planning, has been determined in Item 8 of the Transitional Provisions of the Riga Historical Centre Law. Both the above functions have been assigned to the Council for a certain period of time, i.e., to the moment of the territorial plan of the Riga Historical Centre taking effect or to the moment the land use plan of a particular block or group of blocks taking effect. Up to that moment the Council experiences the right of passing decisions binding on other persons, which shall be considered as administrative acts and which – in accordance with Item 7 of the Transitional Provisions of the Riga Historical Centre Law may be challenged at the Ministry of Culture or appealed against at the court.

As concerns the institutional conformity of the Council with Article 58 of the Satversme, the Saeima stresses that the procedure of formation of the Council has been determined by law. The above procedure complies with the institutional system of direct administration, determined in the State Administration Structure Law. i.e., it is in conformity with Sections 13, 15 and 16 of the State Administration Structure Law. Besides, Item 9 of the Transitional Provisions of the Riga Historical Centre Law determines subordination of the Council, namely, the Ministry of Culture shall supervise the activities of the Council. Thus, up to the moment of elaboration of the territorial plan of the Riga historic centre, the Council, under Items 6 and 8 of the Transitional Provisions of the Riga Historical Centre Law, acts as an institution of Direct Administration and its subordination is determined in compliance

with the State Administration Structure Law. In its turn, after the territorial plan of the Riga historic centre takes effect, the Council shall have only the competence of a public consultative institution, which complies with both - Article 58 of the Satversme and the State Administration Structure Law.

The Saeima disagrees also with the statement of the Dome that the functions, assigned to the Council, restrict the permanent municipal functions of the Dome. Item 13 of Article 15 of the Law "On Local Authorities" determines that one of the permanent functions of self-governments is in accordance with the development plan of the corresponding administrative territory, to manage the construction of it. In order to fulfill its functions the local government has first of all the duty – in the procedure set by law - of elaborating the territorial development plan and to secure the administrative supervision of it. As the Dome has not elaborated the above plan for the Riga historical centre, a conclusion (decision) by a collegial institution on a particular construction project is needed. In accordance with the Riga Historical Centre Law the Council carries out the functions of such a collegial institution.

5. In the answers to the questions of the Constitutional Court the Saeima repeatedly stresses that preservation and protection of the Riga historical centre is a priority if compared with the interests of the development of the city. The Council, formed on the basis of the Riga Historical Centre Law, will secure more efficient possibility of preservation and protection of the Riga historical centre, at the same time favouring also the development and construction of the territory. The Council is just the institution, which is able to further co-operation of all the responsible institutions in the sector of preservation and protection of the Riga historical centre, at the same time guaranteeing observation of the public interests.

The Saeima holds that the functions of the Dome and the Council do not "overlap", as the Council carries out only such duties, which favour unified practice in assessment of projects connected with construction work in the Riga historical centre.

The functions of the Dome and the State Inspection for Heritage Protection still are valid in the other territory of Riga and in the sector not regulated by the Riga Historical Centre Law.

The Saeima additionally points out that the status and subordination of the Council was coordinated with the State Administrative Structure Law and the Administrative Procedure Law. As one of the functions has been assigned to the Council for a certain period of time, the status of

the Council at that time complies with the definition of the "institution", incorporated into the Administrative Procedure Law. In its turn the Riga Historical Centre Law ensures the conformity of the administrative acts, passed by the Council, with the legal norms of the Administrative Procedure Law on passing and appealing of the administrative acts. Besides the Saeima stresses that the notion "institution" in the understanding of the administrative process is wider than that of the Administrative Procedure Law. First of all, "institution" in the understanding of the administrative process means the institution or the official, who/which has the right of passing administrative acts. Secondly, conformity of any institution with the status of an "institution" depends on the fact, whether this institution performs the functions, characteristic of the state institution. Thirdly, "the institution" may be just an institution formed for a certain time or in case of need, if it has the right of adopting individual decisions in the sector of public legal rights.

To answer the question of the Constitutional Court, namely, why the Coordinating Council for the development of the Riga Cultural Heritage stopped its activities, the Saeima explains that the main reason for terminating the activities of the above Council has been essential changes in its body. Namely, several specialists of the Dome, who had successfully worked in the above Council and who were responsible for the development of the city, planning of the city and protection of the heritage, had been changed by the Dome decision. In their place politicians, i.e., the Dome deputies were delegated. Thus the specialists of the sectors of urban planning, development of the city as well as the specialists of architecture and protection of the cultural heritage were not participating in the activities of the Council, therefore the efficiency of the activity of the above Council lessened.

- 6. The State Inspection for Heritage Protection** (henceforth – the Inspection) , when answering to the question of the Constitutional Court what have been the reasons for requesting the Saeima to adopt the Riga Historical Centre Law pointed to the unsuccessful cooperation between the Inspection and the Dome on the issue of protecting the Riga Historical centre since the time when the Riga historical centre was included in the list of the World Heritage. As the result of the unsuccessful cooperation construction of many questionable objects was commenced and the Inspection had had no right to terminate it. In its January 25, 2002 letter No. 01.1-04/90 to the Dome the Inspection mentions several examples of the above construction: a) underground parking-place, which was built without cooperation of the project with the Inspection; b) Triangular Bastion, the construction of which was stopped by the Inspection in 2000, achieving organization of the project competition and elaboration of a new project; c) reconstruction of the

Railway terminal square – in this case the construction of a new multi-storey building on the square was not cooperated with the Inspection. Later the compromise, respecting the principles of construction in the Riga historical centre was achieved, however the Inspection does not regard the building as a successful one; d) gas station in Gogoļa street. In 2001 the Inspection rejected the project of it for several times, considering that the place was not well-chosen. However, just because there was no land use plan, the Inspection could not prove that building of the gas station just on that place was an unsuccessful solution.

In October, 2001 the inspection, which holds that the Riga historical centre is an object of national and international interest and at the same time – a significant part of the Latvian State capital, suggested to pass a specific law for the protection of the Riga historical centre.

The concluding part

7. To assess the compliance of the challenged norms with Article 58 of the Satversme the following issues shall be clarified:
 - 1) if there is the need for a specific legal regulation as concerns preservation and protection of the Riga historical centre;
 - 2) shall the Council, formed in accordance with the Riga Historical Centre Law, be included into the State Administrative Structure.
8. To take the decision whether a specific legal regulation for the Riga historical centre is needed, one has to ascertain not only the status of the Riga historical centre but also the duties of the Republic of Latvia, following from the national legal norms and the norms incorporated into the Convention, as well as the implementation of the above legal norms.

8.1. On December 4, 1997 the UNESCO Committee of the World Heritage adopted the decision to include the Riga historical centre in the list of the World Heritage. The above decision stressed that the Riga historical centre with its medieval structure of urban planning, its art nouveau style architecture and quality as well as the wooden architecture of the 19th. century has a unique value, which has no analogue in the whole world. Incorporation of the Riga historical centre into the UNESCO World Heritage List confirms the special and universal value of this culture object and stresses the fact that its preservation is in the interests of the whole humanity. The expert of the European Council M. Goblete also points out that "the Riga historical centre is not only the value for Latvia but has also an international value as is confirmed by the UNESCO, which included it into the List of the World Heritage. The international acknowledgement places the Riga historical centre on the top of Latvian and European international heritage hierarchy. Therefore the Riga

historical centre deserves a specific attitude” (*see p. 64 of the First Volume of the case*).

Thus preservation, protection and development of the Riga historical centre are not only of local but also of national and even international significance.

8.2. Since the time of incorporation of the Riga historical centre into the UNESCO World Heritage List, Latvia has undertaken all the duties entrusted by the Convention. In accordance with Article 5 of the Convention Latvia has undertaken the duty of implementation of a conformable policy, the aim of which is to determine to cultural heritage certain functions in the public life, to enshrine issues on the protection of the above heritage into programs, to form services for the heritage protection and other services, to perform legal, scientific, technical, administrative and financial activities to protect the heritage.

One of the most significant preconditions for reaching the above aims is the planning of the development of the particular territory. It determines the main guiding lines for usage of the territory in future and gives the possibility of complex utilization of the land (territory), at the same time balancing the public interests with those of the individual, but also determining the relations between the interests of protection of the environmental cultural heritage and the construction.

The Law "On Local Governments" (*Articles 14, 21 and 35*), the normative acts, regulating the land reform, the Law on Territorial Planning, the Construction Law etc. determine that territorial planning is one of the most important functions of the local government. When passing binding Regulations it is within the competence of the local authority to confirm the general plan (urban development plan), and if necessary also the land use plan of its administrative territory as well as to control and secure observation of the above plans.

A detailed land use plan is the planning document of the municipality territory, in which the requirements and suggestions for territorial planning of the municipality are specified. The planning for a certain administrative territory of the local authority shall be elaborated because of two reasons. First of all to secure that specification of a concrete part of the planned and permitted utilization of the territory shall be confirmed under the procedure envisaged for the total territorial planning of the municipality. Secondly, the land use planning may serve as the means for amending of the territorial planning in effect, so as to determine for a particular part of the municipality territory not only a new (and permitted) utilization but also envisaging more detailed requirements for the usage of the territory.

When elaborating the territorial planning the local authority shall observe both - the principle of continuity, which inter alia secures the protection and development of the cultural heritage for the existing and future generations, and the principle of coordination in accordance with which any territorial planning shall be elaborated in accordance with other territorial plans, besides, in all the above types of planning the state, planning areas, municipal and private interests shall be coordinated (*Article 3, Items 1 and 2 of the Law on Territorial Planning*).

Research on spatial planning in Latvia permits the possibility that in certain cases because of the fact that there are no plans and land use planning for the municipal territories "several institutions of the highest level, politicians and, possibly even several party organizations have received illegal income just by supporting development projects and solutions of territorial planning in the interests of particular entrepreneurs or enterprises" (*Spatial Planning and Administration of Populated Places in Latvia. Material for a Discussion: Latvian- Finnish Expert group, Riga, 2002, p.15*).

Thus the territorial land planning of the Riga historical centre would among other things ensure that:

- 1) existence of a unified development strategy of the territory and thus contemporary principles of heritage preservation would be observed;
- 2) reconstruction or tearing down as well as building of new constructions in the above territories could be much better controlled, by taking into consideration the values of the territories of the blocks;
- 3) public information on the development of the Riga historical centre shall be accessible and that would facilitate a compromise between different viewpoints (*see p.176 of the second Volume of the case*).

8.3. As the construction is of great importance in the preservation, protection and development of the Riga historical centre, the requirements and implementation of the normative acts regulating the sector of construction shall be dealt with as well.

8.3.1. Any municipal territory may be utilized, also covered with buildings if it is not at variance with the territorial planning and land use plan of the local authority (*see Articles 3 and 11 of the Construction Law*). As in very many local authorities territorial planning for the whole particular territories has not been elaborated and confirmed as set by the law, the legislator determined that beginning with 2004 the municipalities, which do not have the above planning do not have the right of taking decisions on the permission for building constructions on the concrete plots (*see Item 10 of the Transitional Provisions of the Construction Law*). Even more so – by taking into consideration Item 11 of the Transitional Provisions of the Construction Law, after December 31, 2003 the local

authorities, which do not possess valid territorial planning (also the land use plans), any project for construction shall be given over for public discussion i.e. made public.

As on September 26, 2000 the Dome has adopted the Decision No. 8883 "On the Commencement of Elaboration of the Plan for Preservation and Development of the Riga Historical Centre", from January 1, 2004 to the moment of completion of the above plan the Dome is not authorized to be guided by its April 30, 2002 Decision No. 1251 "On Restrictions of Construction in the Riga Historical Centre", which permits construction on the basis of land use plans of particular blocks or groups of blocks as well as by decisions of the Dome institutions on permission of construction in any specified case. Thus up to confirmation of the land use plan for the territory of the Riga historical centre shall be permitted only under the procedure, regulated by Item 6 of the Transitional Provisions of the Riga Historical Centre Law.

- 8.3.2.** It can be seen from the materials in case that the society was not satisfied with the construction, taking place within the territory of the Riga historical centre under the procedure, which was in effect up to December 31, 2003. Thus for example on March 28, 2001 a letter by the Environmental Protection Club No. 21 – 37, signed by more than 10,6 thousand inhabitants of Latvia and other states, was forwarded to the Inspection. The letter requested the Dome not to review issues, connected with construction on the green zone, parks and squares of the Riga historical centre to the moment of adoption of the Plan for Preservation of the Riga Historical Centre. Thus, the Dome has adopted its decisions on permission of construction in the territory of the Riga historical centre without taking into consideration the viewpoint of a certain part of the society (*see pp. 40 and 121 of the second Volume of the case*).

Besides the Dome Department of the City Development by violating the legal norms (Aarhus June 25, 1998 "Convention on the Access to Information, Public Participation in Taking Decisions and the Possibility of Appealing at the Court on Environmental Issues", Article 17¹ of the Law on Environmental Protection, Article 3, Item 7 of the Law on Territorial Planning, Article 12 of the Construction Law etc.) on October 28, 2003 passed Regulations No. 200-rs "On Determination of the Status of Information of Limited Accessibility" (after taking into consideration the Resolution by the Deputy Chairman of the Dome S.Dolgopolovs and the January 21, 2004 letter by the Dome Legal Affairs Board the validity of the above Regulations has been repealed). At variance with the above normative acts, the status of information of limited accessibility was illegally attributed to several documents, connected with territorial planning and construction, e.g. draft projects, documents confirming the

aim of utilization of plots included in the Riga development plan, construction permits, requests for the construction permits etc. Thus the public was denied the guaranteed by the law right to information on the environmental information and participation in the process of adoption of the decisions, connected with the environment.

- 8.3.3.** To secure preservation and protection of the Riga historical centre as the world cultural heritage, independent and objective control over the construction is a must. As the Riga historical centre lies within the administrative territory of the Riga local authority, the Dome shall also take care on the implementation of the normative acts, regulating preservation, protection and development of the cultural heritage of the territory. However, when analyzing the structure of the Dome it can be seen that the institutional structure of the Dome units does not secure independent and objective control over the construction in the Riga historical centre. The Dome has formed the Inspection for the Protection of Riga Cultural Monuments and the Construction Inspection of the City of Riga in the duties of which are also the control of preservation of the cultural monuments. However, these institutions, first of all are structural units of the institution **subordinated** to the Dome – the City of Riga Construction Board of the Department of the City Development. Secondly, in conformity with Items 5.2.1. and 5.2.3 of the Statutes of the Board, the Head of it confirms the statutes of the structural units, their obligations (duties), personnel registers, amount of the salaries. He/she also experiences the right of expressing directions on the execution (accomplishment) of the above obligations. Besides, in accordance with Riga Local Authority Regulations the Dome Department of the City Development has also the right of coordinating the activities of the Riga Inspection for Cultural Heritage Protection and the Riga Construction Inspection.

Thus it is doubtful whether the viewpoint of the Riga Inspection for Cultural Heritage Protection and the Riga Construction Inspection in the sector of preservation, protection and development of the Riga historical centre is being taken into consideration in all cases.

- 8.3.4.** The materials in the case testify that the Dome has not taken into consideration also the requirements, determined in other normative acts, connected with the construction of new buildings or reconstruction of the existing ones (e.g. they have been built or rebuilt without coordination with the Inspection, which is established by Law) in the Riga historical centre, as well as it has not carried out the duties undertaken by it in classification of the cultural heritage.

First of all on February 20, 1998 at the meeting of the Board for Coordination of the Development of the Riga Cultural Heritage in which

the representative of the Inspection also took part, the Programme for the Classification of the Riga Historical Centre as the object of the world heritage was elaborated, perused and adopted. The Programme envisaged completing the process of elaboration of the Plan for Preservation and Development of the Riga Historical Centre already in 2001. That part of the Programme for which the Dome was responsible was not realized, namely, elaboration of the Plan for Preservation and Development was not even commenced. Secondly, in 2001 when the Dome had delegated politicians and not experts and specialists for activities in the Board for Coordination of the Development of the Riga Cultural Heritage, it terminated its activities as the Board was inefficient. Thirdly, construction of several objects in the Riga historical centre was started, not respecting preservation of Cultural heritage (*see p.39 of the second Volume of the case*). Thus in addition to buildings, mentioned in Item 6 of this Judgment, construction, demolition and reconstruction of many other buildings was started. One could mention demolition of the historical buildings in the territory of the Stock company "Druva" in 2001, which was started illegally, i.e., without coordinating the project with the Inspection. Not taking into consideration the demand of the Inspection, demolition works were not stopped because the relevant Dome institutions had granted permit for doing it. The Inspection holds that destruction of small plants, which lie within the territory of the Riga historical centre, shall not be permitted as they are elements, characteristic of the city cultural and historical environment. The Dome decision on renting the plot to the Company with Limited Liability "TV Riga" for building the pavilion of the S.Eizenstein Centre was also adopted without coordinating the issue with the Inspection (*see pp.21-24 of the second volume of this case*).

- 8.3.5.** Experts of international organizations have also expressed concern about the activities in the Riga historical centre. On September 29, 1999 the former Latvian Ambassador in France Aina Nagobads- Ābols sent the report on the viewpoint of international experts from Paris to the Ministry of Culture. The report states that buildings are being demolished, extensive projecting of new buildings are taking place and the above activities take place without a common (unified) conception. Besides, the experts stressed that the decisions were being taken without coordinated urban planning documentation (*see pp. 135 and 136 of the second Volume of the case*).

The expert of the European Council M.Goblete in her above report has also stressed problems concerning the protection of the Riga historical centre. When expressing her viewpoint on the Development Plan of the Riga historical centre the expert inter alia points out: "all-embracing research on the economical and social aspects of the city development shall be carried out [...] with the aim of elaborating " the plan for

utilization of the land” and/or determining moratorium to several aspects (e.g. building of trade centres)” (p.62 of the first Volume of the case). Besides the expert has pointed out that ”Latvia shall pass respectable legislative acts entrusting the duty of management of the Riga historical centre to state institutions of national level and granting the duty of authorization to the Ministry of Culture and Ministry of the Environment and Regional Development. Municipality shall be granted the role of the leadership partner in the management of the Riga historical centre, so that care should be taken also about the other territory of the capital.

Thus it can be seen that preservation, protection and development of the Riga historical centre is not properly (adequately) secured.

Hence, preservation, protection and development of the Riga historical centre in comparison with other interests of the city development is of prior importance and a specific regulation for the above territory is needed.

- 8.4.** The Law ”On Local Governments” establishes that local governments shall execute the functions delegated by the State and the permanent functions, which are within the competence of local governments. When executing the functions, which are in the permanent competence of the local government, the municipality solves local issues in the interests of the inhabitants of the administrative territory of the municipality. Article 15 (Item 14 of the first part) establishes that one of the permanent functions of the self-government is to manage the construction in the relevant administrative territory, therefore – also in the territory of the Riga historical centre. One may agree with the viewpoint of the Dome that it is a function of autonomous competence (*see Levits E. Conception of the State Administration Structure Law// Latvijas Vēstnesis, No.95, 26.06.2002*). It means that the Cabinet of Ministers may examine the lawfulness only of the decisions taken by the municipality, with an exception of individual decisions, like administrative acts [*Article 7 (the fifth part) and Article 8 (the fourth part) of the State Administration Structure Law*]. However Article 4 (part four) the European Charter on Local Authorities determines :”The authority granted to the local governments usually is full-fledged and exclusive. Another – central or regional power may not challenge or limit it, with an exception of cases, when it has been set by law”. In its turn the third part of Article 8 of the above Charter establishes that any interference of the supervising power shall be proportional to the significance of the interests to be protected.

Thus the Riga Historical Centre Law limits the ”free hand” of the Dome in the sector of construction in the territory of the Riga

historical centre. However, as the Dome has not been able to execute the duties, envisaged in the normative acts, limitation of the permanent function of the Dome in the sector of construction is justifiable and even necessary.

9. Article 10 of the Riga Historical Centre Law envisages formation of the Council, which would further cooperation of institutions and taking of decisions on issues, referring to preservation, protection and development of the Riga historical centre.

In the body of the Council there are the specialists of both – the state institutions and the Dome. On the one hand, in conformity with Article 10 of the Law the Council is a public, consultative institution, the duty of which is advancing of cooperation of the institutions, on the other hand, in compliance with Items 6 and 8 of the Transitional Provisions of the Law, the Council has been delegated also several functions of state administration. In compliance with Article 58 of the Satversme the administrative institutions of the State shall be under the authority of the Cabinet, therefore no institution shall be outside the above hierarchical system.

Therefore to establish whether the Council fits in the hierarchy of the state administrative institutions, both – the status and the functions of the Council shall be assessed.

- 9.1. Formation and competence of the Council as well as the procedure of allocation of funds for realization of its activities has been determined by law. The body of the Council was confirmed by the Cabinet of Ministers. Article 9 of the Riga Historical Centre Law determines subordination of the Council: the Ministry of Culture supervises the activities of the Council.

Besides the Council was formed to promote preservation, protection and development of the Riga historical centre as well as to encourage cooperation of the liable State administrative institutions – the Inspection and the Dome. Public representatives have also been involved in the activities of the Council.

The structure of the state administration shall be formed in such a way that it functions efficiently, democratically and in conformity with the law. Therefore neither the State Administration Structure Law nor other normative acts prohibit creation of consultative institutions, subordinated to the Cabinet of Ministers. Quite to the contrary – such consultative institutions are formed for carrying out particular duties, which are not connected with the use of the public power. Such consultative institutions, which involve in their activities both – the specialists and public representatives give conclusions and opinions in

particular, complicated cases before decisions in these cases are taken by the State administrative institution.

Similar institutions, the status of which has not been challenged, have been formed also in other sectors of the State Administration. For example, the Consultative Councils, which have been determined by the Gauja National Park Law and the Ķemeri National Park Law, as well as the Council of the Road Safety, envisaged by the Cabinet of Ministers September 23, 2003 Regulations No. 530 have the above status.

Thus even though the Council is not characterized by all specific features of a state administrative institution, e.g., it does not have the budget and personnel of its own, one has to agree with the viewpoint of the Saeima, namely, that it has been formed as a direct state administration institution about the activities of which the Republic of Latvia is responsible (*see: Levits E. Conception of the State Administrative Structure Law// Latvijas Vēstnesis, No. 95, 26.06.2002*).

9.2. The second essential feature, characterizing the Council is its competence and functions in the State administration assigned to it.

9.2.1. When carrying out the duties envisaged in Article 11 (Items 3 and 4) of the Riga Historical Centre Law the Council realizes the consultative functions under its permanent competence. Namely, it expresses opinion on particular issues connected with preservation, protection and development of the Riga historical centre and the protection zone to the Inspection or the Dome. However, it is done only in case if the above institutions have requested the above opinions. The norms envisage neither the right of the Council on its initiative to take decisions on the issues, established in Article 11 (Items 3 and 4) nor the obligation of the Inspection or the Dome to ask the Council to give its opinion (conclusion).

Article 14 of the Riga Historical Centre Law does not endow the Council with the right of passing decisions binding on other persons either. It only examines the projects for construction of new buildings in the Riga historical centre obtained from the open competitions in architecture and in such a way securing an additional viewpoint on the projects of new buildings.

Thus the Council, when realizing the functions, envisaged in Articles 11 (Items 3 and 4) and 14 of the Riga Historical Centre Law, realizes the point of the matter of a consultative institution. Namely, to stimulate cooperation of the institutions and coordinate taking of decisions on issues, referring to preservation, protections and

development of the Riga historical centre and the so-called protection zone, the Council shall adopt recommending viewpoints (conclusions).

Ungrounded is the viewpoint of the Dome that the Council, when carrying out its permanent functions may pass administrative acts, binding on other persons, which allow of no appeal. The opinions of the Council, even though issued in the sector of the state administration, do not create direct legal consequences to persons. When passing administrative acts, addressed to persons, the inspection or the Dome shall take the above opinions into consideration.

- 9.2.2.** Items 6 and 8 of the Transitional Provisions of the Riga Historical Centre Law determine the temporary functions of the Council – in particular cases, envisaged in the above Items the Council experiences the right of adopting decisions binding on other persons. The above functions in the sector of the state administration are granted for the period while the territorial planning, land use plans of certain blocks or groups of blocks have been elaborated and taken effect (in accordance with Item 1 of the Transitional Provisions of the Riga Historical Centre Law not later than till July 1, 2004). Delegation of the above functions to the Council is well-grounded when taking into considerations circumstances, which have been analyzed in Item 8 of this Judgment.

In its written reply the Saeima has stressed that the decisions of the Council, which are envisaged in Item 6 of the Transitional Provisions of the Riga Historical Centre Law shall be regarded as administrative acts. Passing of administrative acts is within the competence of the institution. One may agree with the Saeima viewpoint that the status of the Council complies with the definition of the "institution" in the understanding of the administrative process, and under it the concept is more extensive than in the State Administrative Structure Law. In the understanding of the administrative process the institution may be an institution formed for a certain period or just for a particular aim. The Council has the characteristic features of the "institution": first of all it experiences the right of adopting decisions characteristic of the state administration and , secondly, the right of the Council to adopt such individual decisions in the sector of public laws are determined by law. Besides, Item 7 of the Transitional Provision of the Riga Historical Centre Law envisages the procedure of challenging or appealing against the decisions, adopted by the Council in case mentioned in Item 6 of the Transitional Provisions.

One may agree with the Dome that the Riga Historical Centre Law does not directly determine the procedure of appealing against those Council Decisions, which have been adopted in cases, envisaged by Item 8 of the Transitional Provisions of the Law when confirming the lists of the potential construction plots. However that does not mean that the decisions shall not be challenged or appealed against.

The valid normative acts envisage in which institutions and under what procedure the persons experience the right of challenging or appealing against the action or decisions of the state administrative institutions, which violate their rights. Besides, on February 1, 2004 the Law on Administrative Procedure took effect. One of the basic aims of the Law is to subject the activities of the executive power, which refer to concrete public legal relations between the state and the person, to the control of independent, objective and competent judicial power.

In its turn, if a legal norm violates the fundamental rights of the person, then the Constitutional Court may review its conformity with the norm of higher legal force on the basis of the constitutional claim of the person.

Thus, any act of the Council, which has been adopted while carrying out the functions of the state administration, if it violates or may violate the rights or lawful interests of the person, may be challenged or appealed against.

By taking the above into consideration the Council both institutionally and functionally fits into the state administrative structure.

10. The Riga Dome holds that the challenged norms do not comply with Article 1 of the Satversme as the Saeima has passed the Riga Historical Centre Law contrary to the principles of separation of power, trust in law and rule of law, which follow from the above Article. To their mind formation of the Council and determination of its competence limit the functions assigned to permanent competence of the Dome.

To substantiate its viewpoint the Dome, without submitting any arguments, has only quoted several Judgments by the Constitutional Court [e.g. Judgments in cases No. 04-07(99); No. 03-05(99); No. 04-03(98); No. 04-03(99)] which contain references to separation of power and principles of legitimate trust and rule of law. However, the Dome has not taken into consideration that the Constitutional Court has used the above principles for **the analyses of other, different circumstances.**

Thus in its March 24, 2000 Judgment in case No. 04-07(99) the Constitutional Court has analyzed the balance of the power distribution and competence between the functions of the executive power and the judicial power and has concluded that the Cabinet of Ministers, when adopting the decision has in fact solved a civil controversy. In its October 1, 1999 Judgment in case No. 03-05(990) the relations of mutual control and balance of the legislator and the executive power are analyzed, but the principle of rule of law has been used to check whether the Saeima experiences the right of assigning duties (tasks) binding on the Cabinet of Ministers. In its turn the principle of trust in law has been used in the June 10, 1998 Judgment in case No. 04-03(98) to reconstitute the right of the politically repressed persons of getting back the unlawfully confiscated things or receiving compensation for it.

Thus neither the claim of the Dome to the Constitutional Court nor the specification of the claim gives the needed legal motivation for **unconformity of the challenged norms** with the principles of rule of law, separation of power and trust in law. Therefore the Constitutional Court does not assess conformity of the challenged norms with Article 1 of the Satversme.

Taking the above into consideration, proceedings in this part of the case shall be terminated.

The substantive part

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

hereby rules:

- 1.** To declare Articles 10, 11 (Items 3 and 4), 14 and Items 6 and 8 of the Transitional Provisions of the Riga Historical Centre Preservation and Protection Law as conformable with Article 58 of the Republic of Latvia Satversme.
- 2.** To terminate proceedings on the compliance of Articles 10, 11 (Items 3 and 4), 14 and Items 6 and 8 of the Transitional Provisions with Article 1 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the day of its publishing.

The Chairman of the Court session

A.Endziņš