



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, November 11, 2002

JUDGMENT in the name of the Republic of Latvia

in case No. 2002 – 10 - 04

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Romāns Apsītis, justices Ilma Čepāne and Juris Jelāgins

under Article 85 of the Satversme, Article 28¹ of the Constitutional Court Law and Item 5 of the Transitional Provisions of the November 30, 2000 Law "Amendments to the Constitutional Court Law"

on the basis of the claim on initiating a case, submitted by twenty four Saeima deputies, namely, K.Leiškalns, V.Birkavs, M.Zīle, E.Baldzēns, J.Gaigals, J.Kiršteins, J.Bunkšs, J.Pliners, P.Apinis, V.Keziks, G.Dambergs, G.Freimanis, M.Lujāns, P.Maksimovs, O.Tolmačovs, V.Balodis, V.Lauskis, I.Stirāns, I.Ūdre, J.Urbanovičs, J.Leja, L.Muciņš, I.Geige and A.Seiksts

holding the proceedings in writing reviewed the case

" On the Compliance of July 7, 1999 Cabinet of Ministers Regulations No. 321 "On Altering of the Basic Capital of the State Stock Company "The State Real Estate Agency" in the Part on Incorporation of the Real Estate at No.24 Kaļķu Street into the Basic Capital of the State Real Estate Agency with Article 74 (the First, Third and Fourth Parts) and Items 3 and 13 of the Transitional Provisions of the Law "On the Privatization of State and Local Government Apartment Houses"".

The establishing part

1. On July 1, 1991 the Republic of Latvia Council of Ministers (henceforth – the Council of Ministers) adopted the Resolution No. 171 "On Transferring the State and Collective Property to the Local Authorities" (henceforth – Resolution No. 171). The second part of its Article 2 determined that in specific cases, when the particular property was significant and required for state interests, then by the Decree or Resolution of the Council of Ministers it shall be retained as the state property. In accordance with the Republic of Latvia Cabinet of Ministers (henceforth – the Cabinet of Ministers) December 20, 1994 Resolution No. 161 the above Resolution became invalid.
2. On April 26, 1993 the Council of Ministers passed the Decree No. 113 "On Retaining of the Riga Central District Properties of Dwelling Houses in Public Property and Handing them over to the Management of the Ministry of Finance" (henceforth – Decree No. 113). Thus the property of the dwelling house at No.24 Kaļķu street was retained as the public property and from June 1, 1993 handed over under the management of the Ministry of Finance and in the possession of the State Stock Company "Rosme".
3. By the January 27, 1994 decision of the judge, the property rights on 7/20 (seven twenties) parts of the building at No. 24 Kaļķu street but by August 26, 1997 decision of the judge the property rights on the other 13/20 (thirteen twenties) parts were fixed in the Land Registry Book as belonging to the State of Latvia, represented by the Ministry of Finance.
4. The Law "On the Privatization of State and Local Governments Apartment Houses" (henceforth – the Privatization Law) was adopted on June 21, 1995 and took effect on July 25, 1995.
 - 4.1. Article 74 (the first part) of the Privatization Law establishes: "All state and local government dwelling houses, which are handed over for exploitation by the day this law takes effect, shall be handed over for privatization, except the cases mentioned in this Law". At the moment of passing the challenged act the previous wording of the Law in effect determined that the houses shall be handed over for privatization "not later than till July 1, 1999...".
 - 4.2. Article 74 (the third part) of the Privatization Law also establishes that "State dwelling houses shall be transferred to the Central Apartment House Privatization Commission or local governments for privatization in the procedure determined by the Cabinet of Ministers. The dwelling houses transferred to the local governments shall become the property of the local governments. The dwelling houses transferred to the Central Apartment House Privatization Commission shall remain under the tenure and management of the

previous possessor even after the decision on the initiating of the dwelling house privatization is adopted, except for cases when, upon agreement with a former possessor, the Central Apartment House Privatization Commission takes over the corresponding dwelling houses in its tenure and management.”

- 4.3. The fourth part of Article 74 of the Privatization Law determines: ” The state dwelling houses shall not be handed over for privatization, regarding which the Cabinet of Ministers has adopted the decision on non-privatizing and keeping them into the state property. If an apartment, artist’s studio or non-residential space in an apartment house is transferred into ownership prior to the privatization of the apartment house; such an apartment house shall be turned over for privatization in the procedure stipulated by law.”
- 4.4. Item 3 of the Transitional Provision of the Law establishes:” as of the day this Law takes effect it is prohibited to alienate, pledge or encumber with the rights of things those state and local government dwelling houses or their parts, as well as dwelling houses or their parts included into the basic capital of the state or entrepreneurial associations, if apartments existing in them are rented and the non-residential premises are subleased, except for those cases anticipated in Articles 9 and 77 of this law.” At the moment of passing the challenged act the above Item was expressed in the following wording:” As of the day this Law takes effect it shall be prohibited to alienate state and local government dwelling houses as well as dwelling houses included in the basic capital of state and local government entrepreneurial associations, if apartments existing in them are rented and non-residential spaces are leased. As of the day this Law takes effect it shall be prohibited to pledge dwelling houses or their parts included into the basic capital of state or local government entrepreneurial associations if apartments existing in them are rented and non-residential spaces are leased.”
- 4.5. Item 13 of the Transitional Provisions of the Privatization Law determines: ”Dwelling houses included in the basic capital of the state or local government entrepreneurial associations shall be deleted from the basic capital and handed over to local governments of relevant administrative territories or to the Central Apartment House Privatization Commission after covering all expenses for preparation of the apartment building to privatization if the Cabinet of Ministers did not determine another procedure in which shall be financed the preparation of the dwelling house for privatization”.
- 4.6. By June 27, 1997 Law ”Amendments to the Law ”On the Privatization of State and Local Government Apartment Houses”” (which took effect on July 11, 1997) the Privatization Law was supplemented with Article 8¹, the first part of which established that the decision on the commencement of privatization of the state dwelling house shall be adopted by the Central Apartment House

Privatization Commission (henceforth – the Central Privatization Commission).

5. On April 10, 1996 the Cabinet of Ministers passed Resolution No. 120 "On the State Stock Company "the Real Estate Agency"" and established the State Stock Company "The Real Estate Agency" (henceforth – the Agency), the legal successor of rights and liabilities of the liquidated state institution- the State Property Fund. The objective of its activity was to ascertain, register and manage the real estate (Item 2). The Minister of Finance was assigned with the task of submitting the proposals on increase of the registered basic capital of the agency by incorporating into it also the real estate, which was under the management of the state stock company "Rosme" up to May 1, 1996 (Item 6.2).
6. On May 7, 1996 the Cabinet of Ministers passed Regulations No. 164 "The Statute of the Real Estate Agency" (henceforth – the Agency Statute), which determine that the State is responsible for the liabilities of the Agency on its investment in the basic capital (Item 9); that the highest institution of the Agency shall be the shareholders' meeting (Item 34) but the highest executive institution – the Board (Item 35) and the Board shall reach decisions on all the issues connected with the activities of the Agency, with an exception of those, which are within the competence of the shareholders' meeting or the Council (Item 77).
 - 6.1. Item 24 of the Agency Statute (wording of the Cabinet of Ministers September 2, 1997 Regulations No.313, which was in effect at the moment of adoption of the challenged act) determines: "The basic capital of the Agency shall be increased to the amount of the registered basic capital, by investing into it the property of the liquidated State Property Fund and the state property under the tenure of the State Property Fund as well as the real estate registered in the Land Book as the property of the Ministry of Finance at the moment of handing over its book value. The Cabinet of Ministers shall confirm the list of state real estate objects invested in the basic capital and their value."
 - 6.2. Item 25 of the Agency Statute establishes that its basic capital may be increased or decreased only with the Directive of the Cabinet of Ministers.
7. On December 16, 1997 the Agency Board adopted Decision No. 766 "On the Alteration of Status of Apartment Houses" (henceforth – the Decision on Alteration of Status of Apartment Houses) and in accordance with it the status (the objective of its utilization) of the apartment house at No. 24 Kaļķu street was changed and the property was classified as the administrative building.

8. Following the adoption of the Cabinet of Ministers March 24, 1998 Regulations No. 106 "Amendments to the Cabinet of Ministers August 12, 1997 Regulations No. 301 "Statute of the Ministry of Finance"" the Agency was incorporated into the list of entrepreneurial associations under the authority of the Ministry of Finance.
9. On September 18, 1998 change of the status of the building at No.24 Kaļķu street, Riga (from an apartment house to the administrative building) was fixed in the technical inventory plan.
10. On March 31, 1998 the Agency (the authorizer) concluded the contract of authorization No. 4 with the company of limited liability "Namsaimnieks" (agent) on vacation of apartments at No. 24 Kaļķu street, Riga and distribution of the residents in other premises for the money (funds) of the authorizer.
11. On July 7, 1999 the Cabinet of Ministers passed Regulations No.321 " On Alteration of the Basic Capital of the State Real Estate Agency". Regulations established incorporation of the building at No. 24 Kaļķu street, Riga into the basic capital of the Agency. The Technical Inventory Plan confirms that at that time there have been four apartments in the building.
12. The property rights of the Agency to the building at No.24 Kaļķu street, Riga were fixed in the Land Book by the February 19, 2000 decision of a judge.
13. **The applicant** – 24 Saeima deputies – (henceforth- the applicant) challenges conformity of the Cabinet of Ministers July 7, 1999 Regulations No. 321 "On Alterations of the Basic Capital of the State Real Estate Agency" in the part on incorporation of the building at No.24 Kaļķu street, Riga into the basic capital of the Agency (henceforth – the challenged act) with Article 74 (parts one, three and four) of the Privatization Law and Items 3 and 13 of the Transitional Provisions. The submitter of the application points out that up to September 18, 1998 the status of the building at No.24 Kaļķu street had been that of an apartment house and in compliance with the first part of Article 74 of the Privatization Law all state apartment houses, put into operation up to July 25, 1995, shall be handed over for privatization.

The applicant holds that in accordance with the fourth part of Article 74 of the Privatization Law the Cabinet of Ministers could have taken the decision on not handing the property over for privatization only after the Privatization Law took effect, that is – after July 25, 1995. As such a decision was not taken; the building had to be passed over for privatization. In accordance with the first part of Article 58 of the Privatization Law the

Central Apartment House Privatization Commission supervises apartment house privatization, but - as concerns the building at No.24 Kaļķu street, Riga - it did not do so. The applicant expresses the viewpoint that up to September 18, 1998, that is, up to the time when the Agency adopted the Resolution on alteration of the status of the above building, even though the building was the State property and had to be handed over for privatization, was retained as the state property without any legal reason.

The applicant holds that the norm of Article 17 of the Construction Law, determining that the building shall be used only in accordance with the designed functions, has not been taken into consideration. From the Riga Dome (Council) Architecture Department March 11, 2002 Certificate No. 1205-12/2 it follows that the above building was used for different purposes as there are shops, offices and apartments in it. The Technical Inventory Plan also confirms that there are four apartments in the building at No.24 Kaļķu street and the type of the building is that of "the group of three and more apartment buildings" (code No. 1122). Thus the building has to be regarded as an apartment house.

The applicant points out that in compliance with the Privatization Law it is forbidden to alienate state apartment houses, if the apartments are rented and the untenanted part is let out on hire. However, the building was alienated by the challenged act and incorporated into the basic capital of the Agency. The applicant holds that in compliance with the Privatization Law the building at No. 24 Kaļķu street, Riga has to be deleted from the basic capital of the Agency and handed over to the Central Privatization Commission for privatization..

The applicant points out that the objective of the Privatization Law is maximum privatization of apartment houses and the right of persons to privatization is much more important than the state interests to retain in its property several objects or their parts. The applicant holds that the Agency adopted the decision to change the status of the building at No.24 Kaļķu street with the only reason to circumvent the law and incorporate the building in the basic capital of the Agency. In its turn the Cabinet of Ministers, when passing the challenged act has not taken into consideration the real reason and course of alteration of the status of the building at No.24 Kaļķu street and thus has also violated the Privatization Law.

14. **The Cabinet of Ministers** in its written reply points out that the Cabinet of Ministers passed the challenged act in accordance with Items 24 and 25 of the Agency statute. Besides, at the moment of passing the challenged act, the building at No.24 Kaļķu street, Riga according to Technical Inventory Archive Plan had the status of an administrative (and not residential) building. The Cabinet of Ministers holds that in this case part 7 of Article 74 of the Privatization Law (the wording of June

11, 1997 Law "Amendments to the Law "On Privatization of State and Local Government Apartment Houses"") shall be applied. It establishes that "apartments in non-residential buildings (schools, stations and similar buildings) shall be privatized according to other laws". Thus the apartments of the building at No.24 Kaļķu street did not have to be privatized in compliance with the Privatization Law. As this building had the status of an administrative building, also the norms of Transitional Provisions (Item 3) of the Privatization Law were not to be applied and the building - to be passed over to the Central Privatization Commission for privatization.

The Cabinet of Ministers holds that the fourth part of Article 74 of the Privatization Law refers only to apartment and not non-residential houses and shall not be applied to the building at No.24 Kaļķu street. Resolution No 113 was adopted in accordance with the provision of the Decision No.171, stating that in certain cases, if the particular property was necessary to secure state interests, it shall be retained as the state property.

In its written reply the Cabinet of Ministers points out that from July 25, 1995 till September 18, 1998 there was neither any legal reason nor the obligation of handing over the building at No.24 Kaļķu street, Riga for privatization as it was a non-residential building. There are many amendments to the Privatization Law, which changed the dates of handing buildings over for privatization. Thus the legislator has established a lengthy period for handing over all the state apartment houses for privatization and does not determine that all of them are to be handed over just after the Privatization Law takes effect.

It is pointed out in the written reply that the Agency decision on the alteration of status of the building was taken in accordance with still valid at that time Chairman of the Utilization Department of the LSSR Council of Ministers July 11, 1961 Regulations, confirmed in Directive No.185 "Regulations on Technical Stock Takings of Land, Buildings, Structures and Facilities of the LSSR Cities and Villages" (henceforth-Regulations on Technical Inventory Plans). It determined that when classifying the type of a building one shall take into consideration the main objective of the space of the building. If more space is envisaged for trade premises then the type of the particular building shall be regarded as one of the trade premises. On May 13, 1998 the Chairman of the Republic of Latvia Central Statistic Board passed the Directive No 20 confirming "The Classification of Buildings CC" for use in Latvia (henceforth – 1998 Classification of Buildings). It gives a similar explanation: if less than one half of the space of premises is used as a residential space then it is classified as a non-residential building. Besides it is defined that non-residential buildings are buildings, which

are not meant for living in them and are not used for this purpose. Taking into consideration the above, the building at No.24 Kaļķu street, Riga shall be regarded as a non-residential building. The Cabinet of Ministers holds that as the project of the building already anticipated it to be the building "of a combined type" and that only two floors of it were envisaged for apartments then alteration of its status was legal and in compliance with the provisions of Article 17 of the Construction Law. To the viewpoint of the Agency alteration of the status of the building at No.24 Kaļķu street, Riga is in conformity also with Item 3 of the Cabinet of Ministers October 28, 1998 Regulations No. 409 "On Latvian Construction Legislation LBN 211-98 "Many-storey Apartment Houses"" (henceforth – Regulations No. 409), which establishes that a building shall be considered as an many-storey apartment house if the total space of all the apartments covers at least 50% of the useful surface space of the building. The total space of the apartments at No.24 Kaļķu street is 597,2m² but the total space of the building is 3682, 17m² i.e. only one sixth of the total space is envisaged for living.

The Cabinet of Ministers, referring to the Constitutional Court Judgment in case No. 2000-06-04, holds that the provision of Item 13 of the Transitional Provisions of the Privatization Law on deleting apartment houses from the basic capital and handing over for privatization refers only to those apartment houses, which have been included in the basic capital of the state entrepreneurial societies till July 25, 1995. Thus this Item does not refer to the building at No.24 Kaļķu street.

15. **The representative of the applicant**, sworn advocate O.Cers in his written explanations to the Constitutional Court points out that by the term "non-residential building", which is incorporated into Article 74 (the seventh part) of the Privatization Law, the legislator has meant specific buildings, which are not envisaged for apartments, but in which under the extreme necessity several flats have been built, therefore privatization of them shall take place under special laws.

The representative of the applicant holds that the building at No.24 Kaļķu street had to be handed over from the tenure of the State Stock Company "Rosme" to the Central Privatization Commission for privatization but not to the tenure of the Agency, because at that time there were four apartments in the building. The executive power and the subordinated to it State Entrepreneurial Society had to execute the will of the legislator in good faith and pass for privatization all the buildings to which the Privatization Law refers and thus ensure and support the state policy in the sector of privatization.

The representative of the applicant points out that the only norm, determining what an apartment house is, at the moment of the Agency passing the decision on alteration of the status of the building was Article 1, Item 1 of the Privatization Law. Agency has ignored it, because at that moment the building was an apartment house with four flats.

16. Explanations in writing have been received from the relevant state institutions and extracts from the technical inventory material on the building at No.24 Kaļķu street have been attached to the case.

16.1. Explanations submitted by the **Agency** testify that on December 16, 1997 in compliance with the concluded rent agreements four flats had been rented in the building at No.24 Kaļķu street. The Agency, after inspecting the house, had established that it was a non-residential house just because it had followed the 1961 Instruction on Technical Stock-taking. The competence, established in the Agency Statute and Article 876 of the Civil Law (control over property by a holder or actual possessor) gave the Agency the right of changing (altering) the status of the building. In 1998 three out of the four apartments at No. 24 Kaļķu street were vacated. To carry out the activities, on March 31, 1998 contract of authorization No.4 was concluded between the Agency (the authorizer) and the company with limited liability "Namsaimnieks" (the agent). Expenses for vacation of the apartments as well as for the legal activities, connected with the process were paid, from the funds of the Agency. The objective of the vacation of the apartments was efficient management and utilization of the building so as to receive as much income as possible.

16.2. **The Republic of Latvia Ministry of Environmental Protection and Regional Development** explains that normative acts usually do not use the term "status of the building and its alteration" but e.g. the Cabinet of Ministers July 31, 2001 Regulations No. 344 "The Procedure of Establishing Utilization Objectives and Systemization of Real Estate" (henceforth – Regulations No. 344) indicate the objective of utilization of a real estate and its alteration. The legal possessor of the real estate has the right of raising the question on alteration of the objective of utilization of the building, if the main objective has been changed in the cadastral register. The main type of the utilization of a building as well as all the other types of utilization shall be determined in accordance with the procedure envisaged in 1998 classification of constructions. The types of utilization of the building are indicated in the technical inventory plans of building and space groups. At the moment of passing the challenged act the former Cabinet of Ministers May 5, 1998 Regulations No. 166 "Classification of the Objectives of Utilization of the Real Property" determined that the objective (objectives) of utilization of real estate shall be established and altered by the relevant state institution under the tenure of which the property finds itself and in accordance with the legally commenced utilization of the real estate. In different normative acts several

terms like "an apartment house" or an "apartment building" are interpreted differently – in the sense of every particular normative act.

16.3. Excerpts from the Technical Inventory Plans archive material on the building at No. 24 Kaļķu street have been received from the **Republic of Latvia State Land Department**.

The concluding part

1. To assess the compliance of the challenged act with the norms of the Privatization Law, it is necessary to establish whether the building at No.24 Kaļķu street, Riga is an apartment house in the sense of the Privatization Law, namely, whether it is a privatization object. Article 1 of the Privatization Law establishes that in conformity with the inventory plan a state apartment house is a building with more than one apartment in it. At the moment of passing the challenged act four apartments were entered in the Inventory Plan, thus in the sense of the Privatization Law the building at No. 24 Kaļķu street at the time of passing the challenged act was evidently a state many storey apartment house.

It follows from the Technical Inventory Plan that at the moment of passing the challenged act the property at No. 24 Kaļķu street had the status of an administrative building. Thus it has to be ascertained who and under what criteria had the right of determining the status of the building and what legal consequences of fixing it into the Inventory Plan could create.

As both – the Cabinet of Ministers and the Agency acknowledge, the then legal possessor of the building- the Agency were guided by the provisions of the 1961 Instruction on Inventory Plans on Types of Buildings when determining the status (main type of utilization) of the building. Besides one has to take into consideration that neither the instruction, nor the normative acts, regulating the sector of building the term "status of the building" has been used. Thus the legal possessor of the building in the decision on the alteration of the status of the building has determined the type of the building but not the status of it.

Well-grounded is the viewpoint of the Republic of Latvia Ministry of Environmental Protection and Regional Development that at times the same or similar terms are explained in a different way in different normative acts, namely, in the sense of every particular normative act. Thus the objective or task of every term or notion used in a particular normative act has to be ascertained.

Frequently the notion "utilization objective of the real estate" is being used in the normative acts, regulating the sector of construction. By it is understood the type of utilization of the building i.e. the real estate. Thus, for example, at the moment of passing the challenged act the former Regulations No. 166 determined the procedure of ascertaining and classification of the objectives of utilization of the real property. Objectives of utilization are classified to : 1.) find out the real estate to be taxed (Item 2.1); 2.) ensure the legal protection of the real estate (Item 2.2); 3.) improve the unified registering of the real estate in the cadastre and land books (Item 2.3); 4.) establish the cadastre value of the real estate (Item 2.4). The objective (objectives) of the utilization of the state real estate is determined and changed by the relevant state or municipality institution, under the tenure of which the property is, in accordance with the established (or legally commenced) types of utilization (Item 16.1).

In its turn Regulations No. 344, which is in effect at the present moment, envisage that utilization objectives of the real estate are determined for the needs of tax calculation and cadastral evaluation (Item 2); they are registered in the State Cadastre (Item 3); utilization objectives are determined to the real estate to which the above objectives are already determined and registered in the cadastre, if the utilization objective has to be changed (Item 7.2). The possessor of the real estate or its legal administrator or a state or local authority institution suggests to change the utilization objective, if the main objective of utilization of the building has been changed (Item 25.3); types of utilization of the building are indicated in the plans of the technical inventory of the building and premises groups (Item 27).

Chapter 6, Item 5 of the 1961 Instruction on Inventory plans determined: " When establishing the type of the building, the usage of the space of the building has to be taken into consideration. If there are premises for different utilization, e.g. for apartments and offices, but the greatest area is used for the apartments, then the building shall be regarded as an apartment house. In its turn, if the biggest space of the building is used for trade, then it shall be regarded as the trade building type."

In the first part (Item 6) of the 1998 classification of buildings, the principle that buildings are differentiated on their main utilization objects (apartment houses or non-residential buildings) has been fixed. And the technical project of the building depends on it. However, the layout of the building, property rights to it and the institution, which owns it, usually are not regarded as the criteria for classification of the building. The first part (Item 10) of the above document envisages: "Apartment houses are buildings, at least half of the area of which are used for living. If less than one half of the space is used for living

in it, then – in accordance with the utilization objective, determined in the project -it shall be classified as a non-residential building.”

Item 3 of Regulations No. 409 in its turn determines that ”the above building normative shall be applied when projecting two to twenty five storey houses, if there are at least three apartments in it(...) and if the total apartment space (the residential part of the building) is at least 50% of the total useful space of the surface floors of the building.”

The type of the building or the utilization objective of the building shall be indicated in the Inventory Plan of the building; however the entry does not exclude other utilization objectives. Besides one should take into consideration for what aims the legal administrator of the building has determined the status of the building: the type of utilization of the building is entered into the Inventory Plan and Cadastre for calculation of the real estate tax and cadastral evaluation of the building. Thus determination of the type of the real estate or classification of the building, which has been carried out by the legal administrator of the building, cannot create such legal consequences, which in compliance with the Privatization Law may influence or terminate privatization process of the building. Thus, the reference of the Cabinet of Ministers to Regulations No. 409, which establishes that the building may be regarded a many storey apartment house only in case if the residential space covers at least 50% of the total useful space of the surface floors of the building. These Regulations regulate only the legal relations of construction process and cannot influence the procedure of privatization, determined by the Privatization Law.

Thus the term ”the status of the building” may be understood in two ways. First of all as the main type of utilization of the building, which has been determined by the legal administrator of the building just for entering it into the Inventory Plan and the State Cadastre of Real Estates for calculation of the real estate tax and cadastral evaluation. Secondly, as the status of the building, that has been determined in accordance with the norms and aim of the Privatization Law, namely, that every multiple apartment residential house in which - in compliance with the Inventory Plan of the house - there is more than one apartment and which belongs to the state shall be regarded as a privatization object.

Well-grounded is the viewpoint of the representative of the applicant that the only legal norm of higher legal force, which at the moment of the Agency passing the challenged act determined what shall be considered as an apartment house in the process of privatization was Article 1, Item 1 of the Privatization Law. Thus – in the understanding of the Privatization Law - the building at No. 24 Kaļķu street is a state multiple apartment residential house and, in compliance with Article 74 (the first part) of the Privatization Law , at the moment of passing the challenged act had to be handed over for privatization.

2. One may agree with the viewpoint of the applicant that in conformity with the objective of the Privatization Law and its Article 74 (the third part) that the State Stock Company "Rosme" had to hand the house over to the Central Privatization Commission for privatization and not to the tenure of the Agency. However, the Privatization Law did not prohibit to hand the building over to the tenure of the Agency as at that time Item 3 of the Transitional Provisions of the Privatization Law prohibited only alienation of the building.

Ungrounded is the viewpoint of the applicant that up to September 18, 1998 the building was retained as the state property without any legal reason. The Cabinet of Ministers rightly points out that the legislator has repeatedly changed the term for privatization of apartment houses. Namely, the initial wording of Article 74 (the first part) of the Privatization Law did not envisage a specific term for handing the state apartment houses over for privatization. May 7, 1998 wording of the Article determined the term – not later than till July 1, 1999; December 16, 1999 wording – till July 1, 2000. In its turn the August 3, 2000 wording again returned to the initial variant and did not specify a term. Thus the norm of Article 74 (the first part) of the Privatization Law was not violated to the moment of passing the challenged act.

Even though the terms of handing the building over for privatization were not violated, the building at No.24 Kaļķu street was subject to privatization and in compliance with Item 3 of the Transitional Provisions of the Privatization Law it was not allowed to alienate property. Thus the challenged act is at variance with the first and third parts of Article 74 and Item 3 of the Transitional provisions of the Privatization Law.

3. Well-grounded is the viewpoint of the applicant that in the understanding of the Privatization Law the Cabinet of Ministers Decision on Non-privatization of a certain apartment house and preserving it as the property of the State could have been adopted only after July 25, 1995, that is after the Privatization Law took effect (*see the Constitutional Court October 31, 2000 Judgment in case No.2000-06-04*). As the Directive No.113, with which on April 26, 1993 the Cabinet of Ministers determined that the property at No.24 Kaļķu street shall be preserved as the state property was adopted before passing and taking effect of the Privatization Law, then the aim of the above Directive could not be and was not to exclude the apartments of the house from privatization. Therefore the Directive cannot be attributed to the residential part of the house.

The applicant has pointed out that from the objective of the Privatization Law – to privatize maximum number of apartment houses follows that

the fundamental task of the State is to ensure the rights of persons to privatization and not to preserve properties or their parts as the state property. The norm of Article 74 (its fourth part) of the Privatization Law envisages that the Cabinet of Ministers may adopt the decision on non-privatization of apartment houses in special cases. However, after the Privatization Law took effect and till the moment of passing the challenged act, the Cabinet of Ministers had not passed such a decision. Thus, incorporation of the building at No. 24 Kaļķu street in the basic capital of the Agency is at variance with the norm of Article 74 (its fourth part) of the Privatization Law.

4. One cannot agree with the viewpoint of the Cabinet of Ministers that apartments of the building at No. 24 Kaļķu street could not be privatized in compliance with the Privatization Law because in the understanding of Article 74 (the seventh part) of the Privatization Law (at the time of passing the challenged act it was in the former wording) the building was regarded as a non-residential building. The representative of the applicant rightly points out that the term "non-residential buildings" in the understanding of the Privatization Law means specific buildings, not envisaged for living in them but in which separate apartments are set up. Non-residential buildings, which the legislator in compliance with the law has wanted to exclude from privatization – schools, stations and others are public buildings, e.g. envisaged for acquiring education or offering services. In its turn the building at No. 24 Kaļķu street does not comply with the category of specific buildings, as it has been built as a building of a "combined" utilization type. Besides, extracts from the Technical Inventory Plan confirm that it had the above status also at the time of passing the challenged act.
5. Well-grounded is the viewpoint of the Cabinet of Ministers that Item 13 of the Transitional Provisions of the Privatization Law envisages to exclude from the basic capital of the state stock companies only those state-owned apartment houses, which had been included in it before the Privatization Law took effect, therefore this Item of the Transitional Provisions shall not be applied to the building at No.24 Kaļķu street (*see the Constitutional Court October 31, 2000 Judgment in case No. 2000-06-04*).
6. The goal of the Privatization Law is to develop the real estate market and stimulate the up-keep of apartment houses, while protecting the interests of residents (Article 2). The right of the residents to participate in the process of privatization shall be restricted only under the procedure envisaged by law. Thus the Privatization Law considers the right of the tenant to privatization of his/her rented apartment as the fundamental goal of the Law.

In accordance with the Privatization Law a state multiple apartment house is a building, belonging to the state in which – in conformity with

the Inventory Plan - there are at least two apartments. It follows from the above that the goal of the legislator has been to regard every rented apartment of a state-owned multiple apartment house as an object for privatization. Thus, by taking into consideration the combined utilization of the building at No. 24 Kaļķu street and the objective of the Privatization Law – that of protecting the interests of the residents, the status of the building shall be separated for the residential and non-residential parts.

Article 74 (part nine) of the Privatization Law in effect establishes the procedure of it, envisaging that upon the suggestion of the Ministry of Economy the Cabinet of Ministers can renew the status of a dwelling house to the state- owned buildings, if within the inventory file of the corresponding building the status of a dwelling house was recorded as of the day of the taking effect by this Law. Rented apartments and leased artist studios, existing in such a house, shall be given for the privatization if the contracts of artist studios were concluded during the period of time prior to July 25, 1995. Other apartments, artist studios and non-residential premises within such a house shall not be given for the privatization and shall remain the state property.

The Substantive Part

On the basis of Articles 30 – 32 of the Constitutional Court Law,
the Constitutional Court

decided:

to declare the Cabinet of Ministers July 7, 1999 Regulations No.321 "On the Alteration of the Basic Capital of the Agency of the State Real Estate" in the Part on Incorporation of the Building at No. 24 Kaļķu Street, Riga in the Basic Capital of the State Stock Company "the Agency of the Real Estate" as not being in compliance with Article 74 (the first, third and fourth parts) and Item 3 of the Transitional Provisions of the Law "On the Privatization of State and Local Government Apartment Houses"" and null and void as of the day of its publishing.

The Judgment takes force as of the day of its publishing.
The Judgment is final and allowing of no appeal.

The Chairman of the Court session

R.Apsītis