



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

DECISION

in the name of the Republic of Latvia

Riga, July 9, 1999.

in case No. 04 – 03 (99)

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session A.Endziņš, the judges I.Skultāne, R.Apsītis, I.Čepāne and A.Ušacka,
with the secretary of the Court session L.Vīnkalna

in the presence of M.Kučinska - the authorised representative of the applicant
i.e. the Prosecutor General of the Republic of Latvia J.Skrastiņš

and the representatives of the state stock company “The Real Estate Agency” –
the institution that issued the normative act which is disputed- V.Cielava and
the sworn advocate I.Bišers

under Article 85 set by the Satversme (Constitution) as well as Article 16 (item
4) and the second part, item 5 of Article 17 of the Constitutional Court Law
in a public hearing on July 2, 1999 in Riga reviewed the case

**”On Conformity of the State Stock Company - the Real Estate Agency
Regulations ”On the Procedure by which Free Apartments in Dwelling
Houses under the Management of the Real Estate Agency shall Be Rented”
with Articles 2, 10 and 11 of the Law ”On Housing Support Granted by
the State and Local Governments”, Article 40 of the Law ”On the Rent of
Dwelling Space” and Item 4 of the Transitional Provisions of the Law ”On
the Privatisation of State and Local Governments Apartment Houses””.**

The Constitutional Court established:

On April 10, 1996 the Cabinet of Ministers passed Resolution No. 120 “On the State Stock Company “The Real Estate Agency””, establishing the state stock company “The Real Estate Agency” (henceforth – the Agency), subordinated to the Ministry of Finance and the legal successor of rights and liabilities of the liquidated state institution “ The State Property Fund”.

The Statute of the Agency, adopted as the May 7,1996 Cabinet of Ministers Regulations No. 164, determines that the Agency is the state stock company not to be privatised. The objective of its activity is to stimulate the up-keep and management of real estate, while protecting the interests of the state. The Agency shall act in accordance with the Laws, Regulations of the Cabinet of Ministers, other legal acts as well as in compliance with the objective and course of performance envisaged in the Statute.

On April 29, 1997 by its Regulations No. 236 the Agency has certified “The Procedure by which Free Apartments in Dwelling Houses under the Management of the Real Estate Agency shall be Rented” (henceforth – Regulations).

The applicant – the Prosecutor General of the Republic of Latvia – questions conformity of the Regulations by the Agency with:

- 1.) Articles 2, 10 and 11 of the Law “On Housing Support Granted by the State and Local Governments” (henceforth- the Housing Support Law);
- 2.) Article 40 of the Law “On the Rent of Dwelling Space” (henceforth- the Rent Law);
- 3.) Item 4 of the Transitional Provisions of the Law “ On the Privatisation of State and Local Governments Apartment Houses” (henceforth – the Privatisation Law).

In his application the submitter points out that – as is prescribed by the Housing Support Law - local governments (the decision of the respective local government is needed) shall register persons, wanting to receive the above support. In its turn in accordance with Article 40 of the Rent Law, the obligation of the renter is to let the apartment only if it -according to the terms of agreement on the apartment rent- is fit for living.

The Prosecutor General stresses that the procedure determined by the Statute of the Agency are not in compliance with the above laws. It envisages quite different registration criteria and terms of renting free apartments, namely, establishing the register of persons (families) into which the individuals, not registered at the respective municipality to receive the aid, could be included.

In the same way the applicant holds that the Regulations groundlessly connect rent of free apartments or dwelling space with the agreement of the persons to eliminate encumbrance upon the apartment – debt of the rental pay and pay for communal services of the previous tenants, as well as expense of vacating the apartment. He is of the opinion that payment of the above expenses is to be considered mandatory to receive the right of renting the apartment and should be classified as purchasing of rental rights. And that contradicts item 4 of the Transitional Provisions of the Privatisation Law, which forbids selling rental rights.

At the Court session the representative of the submitter of the application sustained the claim.

Besides the representative of the Prosecutor General expressed the viewpoint that the case certainly was within the jurisdiction of the Constitutional Court because the Agency was the legal successor of rights and liabilities of the liquidated state institution "The State Property Fund". The Agency has in fact undertaken functions, to be performed in the sector of public law, of an administrative institution. When realising functions of the management of the state administrative institution in the sector of public law, the Real Estate Agency as if "joins" the institutional system of the Cabinet of Ministers. Thus, its acts are to be contested at the Constitutional Court. Likewise, in conformity with the conception of the state administrative reform, there shall be a possibility to appeal against all decisions of the administrative institutions.

M.Kučinska pointed out that the Regulations had the features of a normative act: it was a written legal act, containing legal norms and referred to all relations of legal rental rights. Besides the Agency is the only institution that is able to grant state apartments to individuals and the Regulations can be applied repeatedly.

The representative of the applicant explained that the Statute of the Agency did not envisage adoption of such Regulations, with an exception of cases when branches of the Agency were being formed.

Besides M.Kučinska stressed that the normative basis of issues on rental rights in Latvia in fact had been established and the Agency had to observe the laws. Therefore Prosecutor's Office could not tolerate the situation that the Agency, alongside with the normative basis in force, established a "secret law", determining how and to what persons one could grant dwelling space owned by the state. M.Kučinska pointed out that when applying the Regulations to individuals – pretenders to dwelling space, special rights and obligations had been established. Thus, the act had not been envisaged to regulate only the activity of the employees of the Agency and it could not be considered the internal document, but a normative act.

The Agency in its written replies to the Constitutional Court explains that several dwelling houses have been assigned to their authority and to manage them, the Board of the Agency on April 29, 1997 with its Regulations No. 236 had passed " Regulations on the Procedure by which Free Apartments under the Management of the Real Estate Agency shall be Rented".

The Agency points out that general precondition of the procedure of renting free apartments with encumbrance have been included in the Regulations. In compliance with item 4 of the Regulations, rental and communal services payment debt of the previous tenants, capital repair and other defects, because of which it is impossible to lodge people in the apartment, are to be considered encumbrances.

In its written reply the Agency points out that when elaborating and certifying the Regulations, terms of the first part of Article 40 of the Rent Law on the obligation to let only the dwelling space fit for living, have been taken into consideration. As it had not been possible to implement the categorical demand of the law with regard to all the free apartments, in accordance with the Regulations, free apartments with encumbrance had been rented only to those persons who had undertaken the task of eliminating it at their own expense. As the Agency explains, it has been impossible to objectively let the above apartments as envisaged in the Housing Support Law i.e. that first of all those apartments shall be rented to socially vulnerable and needy persons (families). To their mind, item 4 of the Transitional Provisions of the Privatisation Law has not been violated, because, in accordance with the Regulations, the right of renting the apartment was not sold. The free apartments under encumbrance have been let to persons expressing readiness to eliminate the encumbrance and, by investing their own money, to make the apartments fit for living.

The Agency stresses that thus the state property has been effectively up-kept and run.

Besides, in its written reply the Agency has expressed doubt if the case was within the competence of the Constitutional Court. The Agency is not an institution subordinated to the Cabinet of Ministers in the conception of item 4, Article 16 of the Constitutional Court Law. To their mind, the Regulations are not a normative act but an expression of will on private rights or the so-called invitation to express the motion to sign an agreement. It has only been drawn up as a document and certified by the decision of the Agency board.

The Agency in its written reply has made it known that the Regulations are of no importance and have become invalid after May 11,1999 when the Agency Board adopted the decision of assigning the dwelling houses, under the

management of the Agency, to the authority of the Central Privatisation Committee of Dwelling Houses to complete privatisation.

At the Court session the representatives of the Agency I.Bišers and V.Cielava announced that the disputed Regulations did not set up any rights and obligations "outside the institution". They stressed the Regulations referred only to the employees of the Agency, namely, - regulated the performance of the institution. The Regulations had not been published and could not be considered "a public act". The Agency regards the Regulations as an act of private rights. Any rental contract with a person has been concluded not according to the Regulations but on the basis of the Decision of the Board, which has to be in compliance with the law. The Board itself has passed the Regulations and the Board itself may "make exceptions".

The representatives of the Agency admitted that the laws regulating legal rental rights were binding to the Agency. However, to their mind the Housing Support Law has to be applied only if it does not harm the fundamentals of the above enterprise and is not at variance with material conditions of its existence. As any economic institution, the Agency concludes contracts taking into consideration the principle of efficiency.

Besides, the representative of the agency V.Cielava pointed out that there was reference to all respective Laws on rental rights in the Regulations. However, their application in practice was rather hard as "the Housing Support Law is like a foreign body that causes certain problems". V.Cielava did not disclaim the viewpoint of the Agency that the Regulations "have filled a certain gap in legislation" but to his mind it did not mean the Regulations could be considered a normative act. The Agency is not a subject authorised to pass normative acts, therefore the Regulations are not a normative act. The representative of the Agency I.Bišers stressed that the Agency did not execute functions of the state administration but was occupied with property management, which was "a civil performance". V.Cielava admitted that the Agency was a part of the institutional system of the Cabinet of Ministers and the Ministry of Finance, but only in the widest sense – as a formation, as an enterprise.

As to the question whether granting apartments to individuals does not contradict Article 91 of the Satversme which establishes that "all human beings in Latvia shall be equal before the law", the representative of the Agency V.Cielava said that it was difficult to answer the question. He is of the opinion that it would be incorrect to contemplate the question only on the principle of universally formal equality, the principle of suitability and the state interests are to be considered as well.

At the Court session the representatives of the Agency sustained the viewpoint that the petition was ungrounded and to be refused.

The Director-General of the state stock company "The Real Estate Agency" J.Motte and his assistant A.Zalpēteris were invited to the Court session as witnesses.

The witness J.Motte explained that the Regulations were not published as they had been envisaged for internal use. On the basis of the above Regulations apartments in dwelling houses under administration of the Agency were granted. People were registered as was prescribed by the Regulations. After that, if they promised to repair the apartments or pay the debt of the previous tenants, they were offered them. Applications, expressing wish to rent apartments, had been received from other institutions as well. In fact, apartments had not been rented only to the employees of the Agency.

J.Motte admitted that when reviewing applications on granting apartments, he had made decisions "quite subjectively".

Besides he pointed out that the Board had confirmed the minutes of the Apartment Committee on granting an apartment to a certain person if the minutes met the requirements of the Regulations. If they did not – then the Committee refused to grant an apartment.

The witness J.Motte holds that the Agency has rented apartments to realise entrepreneurial activity, envisaging privileges to its employees. He pointed out that other state stock companies acted in the same way.

At the Court session the witness A.Zalpēteris explained that the Regulations had been adopted as an internal document, so that the Agency would know on what criteria to conclude rental contracts with the persons who had promised to cover debts of the previous tenants and make capital repair, i.e., with the persons who had agreed to the terms of the Regulations.

A.Zalpēteris expressed the viewpoint that the Regulations were needed, as the Cabinet of Ministers had not determined the procedure of concluding the above contracts. A.Zalpēteris holds that, by acting in accordance with the Regulations, the Agency has concluded civil transactions.

The witness A.Zalpēteris explained that when the number of pretenders to apartments under the management of the Agency grew and it was known that dwelling houses would be assigned to privatisation, the Agency had understood that it would not be advisable to publish offering to rent the apartments. However, information on rental possibilities could be read in the newspapers.

A.Zalpēteris admitted that in accordance with the Regulations there had been a possibility to grant apartments also to persons who were not employed at the Agency.

A.Zalpēteris does not deny that the Agency has to observe laws, including the Housing Support Law and that it is within the competence of the Constitutional Court to evaluate if a specific act is or isn't a normative act.

The Constitutional Court, evaluating the compliance of the State Real Estate Agency Regulations " On the Procedure by which Free Apartments in Dwelling Houses under the Management of the Real Estate Agency" with Articles 2, 10 and 11 of the Law "On Housing Support Granted by the State and Local Governments", Article 40 of the Law "On Rent of the Dwelling Space" and item 4 of the Transitional Provisions of the Law " On the Privatisation of State and Local Governments Apartment Houses" acknowledged the claim of the applicant as well-grounded and

concluded:

1

One of the fundamental principles of a democratic state is the principle of separation of power. It follows that there exists control of the judicial power over the legislative and executive power. No legal norm or activity of the executive power shall remain out of control of the judicial power, if it endangers interests of an individual.

Courts, incorporated into the legal system of general jurisdiction, are authorised to review civil liability controversies, criminal cases as well as claims arising from administratively legal relations. However, in compliance with the law, the above courts are not authorised to declare acts of normative nature null and void. Therefore in 1996 in Latvia was established the court, not incorporated into the legal system of jurisdiction – the Constitutional Court, which in compliance with Article 85 of the Satversme, is authorised to review cases regarding compliance of laws and other acts with the Satversme and other laws.

To state whether – in compliance with item 4, Article 16 of the Constitutional Court Law - the claim in this case is within the competence of the Constitutional Court, it shall first of all be ascertained if the Agency is " an institution subordinated to the Cabinet of Ministers" and secondly- whether the Regulations is a normative act.

To draw the conclusion on the legal status of the Agency and its place in the state administrative system, the legal basis of establishing the Agency, its objectives, as well as the historic development of the administrative real estate institution to the moment of foundation of the Agency as an enterprise shall be considered.

After renewal of independence, gathering of information on the state property and its registration started in Latvia. Several legal acts were adopted to implement it:

- 1) the Supreme Council December 3, 1999 Resolution: "On Protection of the State Property in the Republic of Latvia", entrusting the Council of Ministers with control on up-keep and efficient management of the state property;
- 2) the Council of Ministers July 1, 1991 Resolution No. 171 "On Assigning the State Property and Collective Farm Property to the Authority of Local Governments", envisaging that to protect the state interests, particular objects of property– with a Resolution by the Council of Ministers- may be retained as the state property;
- 3) the Council of Ministers November 12, 1992 Resolution No. 476 " On Registration and Management of Real Estate at the Possession of the State". The Resolution determines that the Ministry of Finance shall manage real estate at the possession of the state, which is not under the management of other ministries or state administrative institutions. To ensure methodical leadership of the registration process of the state property and control of collection of revenue from the property, it was envisaged to establish the State Economic Department;
- 4) the Council of Ministers June 21, 1993 Resolution No.332 "On Registration of the State Real Estate", envisaging to elaborate the registration system of the state property.

Forms of management of the state real estate and organisational structures have been changed several times – from the state institutions to enterprises. However, the function of all those structures has remained unchanged- administration and management of the state real estate.

On February 17, 1994 the Saeima passed the Law " On the State Property Fund". To separate the state administrative and management functions, the state institution "The State Property Fund " (henceforth – the Fund) was established. It was the legal successor of liabilities and rights of the State Company Department and the State Management Department of the Ministry of Finance. The whole state property was under the management of the Fund.

Being of the opinion that – as a result of the privatisation process – functions of the Fund had changed and the number of state enterprises under the management of the Fund had considerably decreased, the Cabinet of Ministers with its April 9, 1996 Regulations No.122, passed under Article 81 of the Satversme, liquidated the above state institution.

The Agency - the legal successor of rights and liabilities of the "State Property Fund" was established. The Agency was established by the subject of public rights- the Cabinet of Ministers with its April 10, 1996 Direction No.120. The Statute of the Agency was certified by May 7, 1996 Regulations No.164. In accordance with the Statute, the objective of the activity of the Agency is to realise state interests in management and efficient running of the state real estate. The Agency is implementing the objective by observing the determined directions of activities (item 21 of the Statute). The Head of the Board, who at the same time is also Director General of the Agency, is confirmed by the Cabinet of Ministers. The Statute also envisages a certain influence of the Cabinet of Ministers and the Ministry of Finance on the activities of the Agency as well as control over them.

Thus, by the will of the state, the Agency has been established as an institution entrusted with the function of the subject of the public law, i.e. management of the state real estate. Even though it is within the competence of the Agency to accomplish activities of civil character and it has been established as an enterprise, it does not mean that the Agency is merely the subject of private rights.

The representatives of the Agency gave an incomplete interpretation of the notion "subordinated institution", mentioned in item 4, Article 16 of the Constitutional Court Law. They held that the notion referred only to "subordinated" and "supervised" institutions, mentioned in Article 13 of the Law "The Structure of Ministries" and by no means referred to stock companies under the jurisdiction of ministries.

To establish whether the Agency, that is a stock company under the authority of the Ministry of Finance, is "an institution subordinated to the Cabinet of Ministers" in the notion of item 4, Article 16 of the Constitutional Court Law, one should adhere to Article 58 of the Satversme. After analysing the verbatim report of the Satversme Assembly as well as the Law "The Structure of the Cabinet of Ministers" of 1925 and the Law "The Structure of the Ministries" of 1928 it is evident that the will of the legislator has been to unite the whole administrative system, not dividing its institutions into degrees or levels of subordination. "The Cabinet of Ministers is the only highest executive institution through which unity of the executive power is established in the state." (K.Dišlers. Articles on the Satversme of the Republic of Latvia. "TNA", Riga, 1998, page 26).

The present structure of the state administrative institutional system has changed, separating the institutions which are subordinated, supervised and under the authority of ministries. However, normative acts do not define the essence of the term "under the authority of". Besides, legal literature and the concept of the state authority do not sufficiently interpret the term. Nevertheless, the sense of Article 58 of the Satversme has remained unchanged – to unite all the state institutions, performing functions of public power, into one common system under the authority of the Cabinet of Ministers.

When acquainting oneself with the materials on elaborating and passing of the Constitutional Court Law, it is obvious that the will of the legislator - by establishing the Constitutional Court in the Republic of Latvia and envisaging its authority to determine compliance and legality of normative acts – has not been to set up constitutional control only over acts, passed by the institutions under subordination or supervision of the Cabinet of Ministers, leaving normative acts, adopted by the institutions under authority of it without any legal control. Thus "the institutions under the authority of the Cabinet of Ministers" in the conception of the Constitutional Court Law all are subordinated institutions, which are engaged in realisation of administration of the state.

Thus, by evaluating the above legal norms all in all and by taking into consideration the principle of separation of power, one has to admit that the Agency is subordinated to the Cabinet of Ministers and evaluation of its activities, if connected with passing of normative acts, is within the competence of the Constitutional Court.

3

Article 1 of the Constitutional Court Law determines that the Constitutional Court shall review cases concerning the compliance of laws and other legal norms with the Constitution. It is within the competence of the Constitutional Court to establish whether in cases of doubt a specific act is to be considered a normative act. At the Court session even the representatives of the Agency did not object to the above statement.

A normative act is a legal act, containing legal norms. Since regaining independence of the Republic of Latvia and renewal of the action of Satversme, the Latvian legal system regained its affiliation to the legal sector of the continental Europe. In accordance with the present legal conception, the legal norm is an abstract instruction of conduct, which is not meant for specific, single episodes. One of the fundamental features of legal norms is the fact that the legal norm contains mandatory directions, which include a generally binding regulation. Besides, with the help of legal norms and by taking into consideration the principles of justice and equality, the state succeeds in solving the existing and potential conflict situations in the society (D.Schmalz.

Methodenlehre für das Juristische Studium. Nomos Verlagsgesellschaft, Baden-Baden, 1992, S.34). Legal norms contain certain terms, implementation of which is the basis of existence of legal relations.

Regulations determine the procedure of renting the free apartments of dwelling houses under the management of the Agency. It gives a detailed characteristic of both – the free apartments and the apartments with encumbrance, that cannot be found in any normative act, regulating legal relations of rent. Besides it additionally determines that free apartments with encumbrance shall be rented to persons who undertake the obligation of eliminating the above encumbrance with their own money.

Contrary to the statement of the representatives of the Agency and the highest officials of the Agency, who were invited to the Court session as witnesses, the Regulations shall not be considered as directions meant for internal use, applied only to employees of the Housing Department or other employees of the Agency.

One of the most important features of dividing legal acts into internal and external acts is the addressee of a respective act. The public subject passes internal legal acts to determine the procedure of inner activity of its institution or the institution subordinated to it, or to explain the procedure of application of some external normative act. These acts are binding only to the institution, which passes the acts, its structural units and employees. But external normative acts are binding to an abstract scope of persons and they regulate legal relations between the subject of public rights on the one hand and an individual or other legal subjects on the other.

Regulations meet all the requirements of features of an external normative act – its main objective was to determine the scope of persons to whom it was possible to grant the state apartments under management of the Agency. It did not envisage that only the employees of the Agency had the possibility of receiving an apartment. Regulations contained binding preconditions for those who wanted to obtain rental rights and it could be used repeatedly. Application of the Regulations has caused legal effects.

Administrative acts – decisions of the Board on granting rental rights to concrete persons – have been adopted on the basis of the Regulations. These decisions gave the right of concluding rental contracts. Yet by no means an administrative act shall be based on an internal legal norm. The procedure of concluding a rental contract like this can be applied to apartments belonging to state and not among private legal subjects, where rental contracts are concluded just like any other civil contract – by an agreement between the contracting parties.

Among the case materials there are documents on check-up accomplished by the Prosecutor's office, which confirm that the right of renting a state-owned apartment has been granted to a great number of persons, among them – persons who do not work at the Agency. Thus the Regulations refer to an abstract scope of persons and its activity is directed "outwards".

It cannot be denied that the Regulations do not comply with the demand determined by law- that of publishing a normative act, which is necessary so that the act takes legally binding effect and may be applied. However, the excuse expressed by the representative of the Agency I.Bišers, stating that the Regulations have not been published or announced in a different manner therefore shall not be considered an external normative act, is not the most important feature as it does not change the essence of the legal norm.

Ungrounded is the viewpoint of the representative of the Agency that Regulations may not be considered external normative acts as the enterprise is not authorised to pass the above acts. Authority to pass a particular legal norm is the precondition of the act taking legal effect and becoming applicable. The fact, that the Agency, violating the competence, determined by the Statute, has unlawfully passed external legal norms, included in the Regulations, does not mean that there are no features of a normative act in it.

4

Not everybody may pass external legal norms: only subjects of public power, authorised to do so, are allowed to adopt them. The first part of Article 14 of the Law "The Structure of the Cabinet of Ministers" establishes that the Cabinet of Ministers may issue normative acts – regulations. In compliance with this Law, determining the fundamental issues of the state administration, other institutions of the state administration, also those subordinated to ministries are not authorised to pass external normative acts. The Statute does not envisage such rights either. In accordance with item 82.4 of the Statute, the Board- by an agreement of the general meeting – may confirm only regulations or statute of the newly formed branches and agencies.

Thus, by passing Regulations, containing external legal norms, the Agency has violated the competence established within its Statute and has acted without regard for authority. Regulations, passed in this manner, are unlawful and inapplicable.

5

In the sector of housing rights, the element of social care for people is of great importance. The right to a dwelling space is an internationally declared

social right (UNO Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Pact on Economic, Social and Culture Rights).

By taking into consideration the interest of the society, the rental right is obtaining not only a private disposition, but also that of public rights. Legislative acts on dwelling space, containing mostly imperative legal norms, may envisage definite limitations on property rights.

In Latvia renting issues are regulated not only by norms of Civil Law on rent and lease, but also by a specific legal norm in this sector – Housing Support Law and the Law on Rent of Dwelling Space, as well as by respective Decisions of the Supreme Council on the above Laws taking effect.

Both the Laws shall be applied in mutual connection as the Housing Support Law regulates the procedure of granting the right of renting a dwelling space from the state and municipality dwelling fund. It also determines the sequence of granting renting rights to those who want to rent the apartments. But the Law on Rent of Dwelling Space determines the procedure of renting the apartment after it has been granted.

To implement authorisation of the legislator, on November 23,1993 the Cabinet of Ministers passed Regulations No. 17 "On the Procedure by Which Persons (Families) shall be Registered in Order to Receive Housing Support Granted by the State and Local Governments" (henceforth – Regulations No.17).

The above normative acts clearly determine the rules when renting the dwelling space that is the state property:

- 1) the state, guaranteeing aid in solving apartment problems according to the procedure determined by the Law, has envisaged to accomplish the above by renting state apartments in cases determined by the Law (Articles 1,2 of the Housing Support Law);
- 2) renting of state apartments is envisaged only to certain groups of inhabitants – to socially vulnerable and needy persons, to tenants of dwelling houses, which have been denationalised and restituted to lawful owners as well as to other persons if they have registered in accordance with the procedure determined by the Law (Articles 4,5 9 of the Housing Support Law);
- 3) the registration of the above persons (including those who are pretenders just to rent of state apartments) shall be accomplished by the local governments and is to be completed in accordance with the procedure and form determined by Regulations No. 17.

Interests of the state in management of the real estate include also straightforward and precise implementation of the laws passed in the sector of the state apartment policy, because – if the state guarantees housing support by granting apartment rent, then it shall be granted by making use of unrented state apartments.

One of the courses of the Agency activities is to assign the right of using the state real estate to physical entities by concluding respective contracts. Yet, the Agency shall realise its activities in compliance with laws, Regulations by the Cabinet of Ministers and other legal acts as well as with the objectives and course of the Statute. Consequently, the state has authorised the Agency to rent state apartments under the procedure determined by the laws and other normative acts, regulating the rental rights, but it has not been authorised to determine the procedure itself.

Thus, even the contents of the Regulations is not in compliance with the legal norms, included in the above laws and Regulations of the Cabinet of Ministers. It contradicts the condition envisaging to what persons, in what sequence (Articles 10, 11 of the Housing Support Law) and by taking into account acceptability of sanitary technical conditions and facilities (Article 40 of the Law on Rent of Dwelling Space) dwelling space shall be rented.

By envisaging that persons shall be granted rental rights only after paying the debt of previous tenants for dwelling space rent and communal services, as well as after covering the expense of vacating the apartment, the Regulations contradict item 4 of the Transitional Provisions of the Privatisation Law. The above item determines that from July 25, 1995 it is not allowed to sell state apartment rental rights.

Unlawfully adopting the disputed Regulations, the Agency determined such criteria for receiving rental rights in state owned apartment houses, which were not in compliance with the existing laws. The Regulations were not published and thus were not accessible to all persons interested in the issue. Contrary to the interests of the state, the Agency subjectively, wilfully and on its own judgement chose persons with whom to sign rental agreements. In point of fact the persons were divided into the following groups: "wealthy", "needy" and "important persons". Thus the constitutional principle, determining that all human beings shall be equal before the law, has been violated.

6

When deciding on the date from which the disputed Regulations could be declared null and void, it should be taken into account that the Agency, by applying the Regulations and renting the apartments under its management to persons, who did not have the right, determined by the Housing Supply Law, of

receiving them, has essentially violated the legal rights of other pretenders. The Regulations are not in compliance with the principle of rule of law, which determines that performance of the whole state administration shall be based on the law. As the Agency by passing the Regulations has overstepped the limits of its competence, the Regulations may not cause lasting legal effects and shall be declared null and void from the moment of its adoption.

Under Articles 30 -32 set by the Constitutional Court Law

the Constitutional Court

DECIDED:

to declare the state stock company "The Real Estate Agency" Regulations "On the Procedure of Renting Free Apartments in the Dwelling Houses under the Management of the Real Estate Agency", certified by the April 29, 1997 Agency Board decision **as not being in compliance** with the Law "The Structure of the Cabinet of Ministers", as well as with Articles 2,10 and 11 of the Law "On Housing Support Granted by the State and Local Government", Article 40 of the Law "On Rent of the Dwelling Space", item 4 of the Transitional Provisions of the Law "On the Privatisation of State and Local Governments Apartment Houses"" and **null and void from the moment of its adoption.**

The Decision takes effect from the moment of its announcement. The Decision is final and allowing of no appeal.

The Decision was announced in Riga, on July 9,1999.

The Chairman of the Court session:	A.Endziņš
Justice of the Constitutional Court	I.Skultāne
Justice of the Constitutional Court	R.Apsītis
Justice of the Constitutional Court	I.Čepāne
Justice of the Constitutional Court	A.Ušacka