



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, October 31, 2000

JUDGMENT in the name of the Republic of Latvia

in case No. 2000-06-04

The Constitutional Court of the Republic of Latvia in the body of the Chairperson of the Court session Ilze Skultāne, the justices Juris Jelāgins and Romāns Apsītis with the secretary of the Court session Egija Rozenberga,

in the presence of the deputy Boriss Cilevičs – the authorized representative of the petitioner, i.e. twenty deputies of the 7th. Saeima, namely, Boriss Cilevičs, Miroslavs Mitrofanovs, Modris Lujāns, Andrejs Klementjevs, Igors Solovjovs, Juris Sokolovskis, Aleksandrs Golubovs, Boriss Rastopirkins, Martijans Bekasovs, Pāvels Maksimovs, Oļegs Tolmačovs, Jakovs Pliners, Oļegs Deņisovs, Egils Baldzēns, Viola Lāzo, Osvalds Zvejsalnieks, Pēteris Salkazanovs, Jānis Leja, Jānis Čevers and Jānis Jurkāns

and the authorized representative of the institution – the Cabinet of Ministers - that issued the the act, which is disputed - Aivars Caune as well as the sworn advocate Jānis Pētersons

under Article 85 set by the Satversme (Constitution) as well as Item 4 of Article 16 and the second part of Article 17 of the Constitutional Court Law,

in a public hearing in Riga, on October 17, 2000 reviewed the case

” On Compliance of the Cabinet of Ministers March 18,1999 Regulations No. 128 ”On the State Stock Company ”The Agency of the Diplomatic Service” – Namely, its Part on Incorporation of the State-Owned Apartment House at No.57 Elizabetes Street in the Equity Capital of the Stock Company ”The Agency of the Diplomatic Service”- with the First Sentence of Item 2, Item 3 and item 13 of the Transitional Provisions of the Law ”On the Privatisation of State and Local Governments Apartment Houses”.

The Constitutional Court **established:**

1. **The applicant** holds that the Cabinet of Ministers of the Republic of Latvia (henceforth- the Cabinet of Ministers) March 18, 1999 Regulations No. 128 "On the State Stock Company "The Agency of the Diplomatic Service"", namely its part on incorporation of the state-owned apartment house at No.57 Elizabetes Street, Riga in the equity capital of the State Stock Company "The Agency of the Diplomatic Service" (henceforth- the disputable act) is not in compliance with the first sentence of Item 2, as well as Items 3 and 13 of the Law "On the Privatisation of State and Local Governments Apartment Houses" (henceforth- The Apartment House Privatisation Law).

In the application unconformability with the Law is motivated like this:

- 1) By the disputable act the apartment house at No.57 Elizabetes Street in Riga was alienated of the State Stock Company "The Agency of the Diplomatic Service"". Items 2 and 3 of the Transitional Provisions of the Apartment House Privatisation Law have been violated in the process. In compliance with Item 2 of the Law any state-owned apartment house can be alienated only according to the determined procedure of this Law, i.e. privatising them for privatisation vouchers. In compliance with Item 3, it is not allowed to mortgage state and local government apartment houses or their parts, which have rented apartments or leased non-residential space;
- 2) When issuing the disputable act, the Cabinet of Ministers has incorporated the apartment house at No.57 Elizabetes street in the equity capital of the Stock Company, but- in conformity with Item 13 of the Transitional Provisions of the Apartment House Privatisation Law, apartment houses, included in the equity capital of the state stock companies shall be excluded from it and handed over for privatisation.

The submitter of the application requests to declare the disputable act as unconformable with the law from the moment of its adoption.

At the Court session the representative of the applicant upheld the claim and stressed that the disputable act limited the right of the tenants- determined by the Law - to privatise their apartments.

The above right of the tenants may be limited only in accordance with the procedure envisaged in the fourth part of Article 74 of the Apartment House Privatisation Law. The Council of Ministers of the Republic of Latvia (henceforth- the Council of Ministers) February 18, 1992 Resolution No.53 "On the Development of the Bank Network and Guaranteeing of Premises" (henceforth- Resolution No.53), which envisaged to preserve the real estate at No.57 Elizabetes Street, Riga as the state property, was adopted with an objective of not allowing denationalisation of the above

building. At the moment of adoption of Resolution No.53, there was no possibility of advancing the objective of not subjecting the apartment house to privatisation, as the privatisation of apartment houses was commenced only in 1995.

The representative of the applicant pointed out that the apartment house in Riga at No.57 Elizabetes Street was entered in the Land Register Book on the name of the State Stock Company "The Agency of the Diplomatic Service". As is well known, the property is entered in the Land Register Book on the name of its owner. Thus, it is clear that the building had been alienated in favour of the State Stock Company.

2. **The Cabinet of Ministers** in its written reply and supplement to the reply expressed the viewpoint that incorporation of the real estate at No. 57 Elizabetes street, Riga in the share capital of the State Stock Company "The Agency of the Diplomatic Service" was not illegitimate. Thus, to their mind the petition of the Saeima deputies is groundless and should be rejected because of the following:

- 1) in compliance with part 4 of Article 74 of the Law "On the Privatisation of State and Local Governments of Apartment Houses", Apartment houses shall not be handed over for privatisation, regarding which the Cabinet of Ministers has adopted resolution to preserve them as state property. In accordance with Item 2 of Resolution No. 53, the real estate at No.57 Elizabetes Street, Riga was preserved as state property. The objective of Resolution No.53 was to preserve the real estate at No. 57 Elizabetes Street, Riga for state needs, thus not subjecting it to denationalisation.
- 2) incorporating the real estate at No.57 Elizabetes Street, Riga in the equity capital of the not to be privatised state stock company "Rosme" and receiving shares on it, no alienation, violating Item 2 of the Transitional Provisions of the Law on Privatisation of the Apartment houses has taken place. It was just an act of separation of the property to reach a concrete aim. The disputable act has repeatedly confirmed the state financial investment in the above stock company, including the real estate at No.57 Elizabetes Street, Riga. At the moment of issuing the disputable act, the building at No.57 Elizabetes Street, Riga was not a state-owned apartment house, but the property of the State Stock Company "The Agency of the Diplomatic Service". Therefore the reference on violation of Item 2 of the Transitional Provisions of the Law on Privatisation of the Apartment Houses has no legal grounds.
- 3) property rights have not been changed by the disputable act, as the State Stock Company "The Agency of the Diplomatic Service" is the legal successor of liabilities and rights of the State Stock Company "Rosme". In compliance with the Law "On Stock Companies", the whole equity capital of a state stock company, i.e. shares in the amount of the

investment, belongs to the state, but part 6 of Article 21 of the Law establishes, that the invested bodily things (in this case- the real estate) belong to the stock company. Such separation should not be considered as alienation of the property, as – in conformity with the Law "On the Procedure for Alienation of the State and Local Government Property" alienation is the sale, barter and transfer without payment of state property in the procedure determined by this Law, if as a result of it ownership rights to the property are transferred from the transferor to the transferee. By incorporating real estate in the equity capital of a state stock company, the state property is neither sold, nor bartered or transferred. Thus- no alienation of the state property has taken place. The real estate at No.57 Elizabetes Street, Riga is still at the disposal of the State Stock Company "The Agency of the Diplomatic Service". It has not been alienated or mortgaged. Therefore there are no grounds to speak of violation of Item 3 of the Transitional Provisions of the Law "On the Privatisation of Apartment Houses";

- 4) the disputable act precisely defines the state property investment in the State Stock Company "The Agency of the Diplomatic Service". Therefore the above Resolution shall not be connected with Item 13 of the Transitional Provisions of the Law "On the Privatisation of Apartment Houses".

At the Court session the representative of the Cabinet of Ministers upheld the petition as ungrounded and requested the Constitutional Court to reject it. He explained, that management of a real estate was not the function of the state central executive power and stressed that the Council of Ministers had had the right of adopting the decision on assigning the state company the task of managing the real property in the interests of the state. Thus, on June 19, 1992 the Council of Ministers adopted Resolution No. 242 " On Granting Premises for Riga Bank Offices". In compliance with Item 1 of it, the building at No.57 Elizabetes Street was allotted to tenure and use of the State Stock Company "Rosme". The representative of the Cabinet of Ministers concluded that the state- in the person of its executive official-when adopting the decision on preservation of the real estate at No.57 Elizabetes Street, Riga as the state property and later, incorporating it in the equity capital of a state stock company had not alienated it but- in compliance with legal acts- reached the decision on the issue of profitable and efficient management of the real estate.

At the Court session the representative of the Cabinet of Ministers pointed out, that the disputable act had repeatedly confirmed the state property investment, among others also the real estate at No.57 Elizabetes Street, Riga, in the equity capital of the State Stock Company. Initially the above real estate had been included in the equity capital of the State Stock Company "Rosme" by the Cabinet of Ministers November 23, 1995

Regulations No.717 "On the Equity Capital of the State Stock Company "Rosme"" (henceforth- Regulations No.717).

As concerns conformity of the disputable act with Item 13 of the Transitional Provisions of the Law "On the Privatisation of Apartment Houses", the representative of the Cabinet of Ministers explained that the Cabinet of Ministers had not discussed the issue on privatisation of the real estate at No.57 Elizabetes Street, Riga.

3. When preparing the case for review, it was in addition ascertained that:
 - 1) the State of Latvia ownership rights on the real estate at No.57 Elizabetes Street, Riga had been registered (confirmed) in the Land Book on September 7, 1995;
 - 2) by the Cabinet of Ministers August 14, 1996 Regulations No.334 "On the State Stock Company "Rosme"" (henceforth- Regulations No.334), the real estate at No.57 Elizabetes Street, Riga was confirmed as the state investment in the equity capital of the State Stock Company "Rosme". On the basis of the above Regulations, on June 27, 1997 the Land Registering Office consolidated the ownership rights of the State Stock Company "Rosme";
 - 3) on the basis of April 15, 1998 Certificate No.2.4.6687 by the Republic of Latvia Enterprise Register, on September 15, 1998 an entry about renaming the State Stock Company "Rosme" to the State Stock Company "The Agency of the Diplomatic Service" was made in the Land Book.

The Constitutional Court concluded:

1. In the sector of housing rights, it is important to realise that the right to a dwelling space is an internationally declared social right (see July 9, 1999 Constitutional Court Decision in case No. 04-03/99/). The state, while performing any activities with a state owned apartment house, shall take into consideration the principle that all human beings are equal before the law (Article 91 of the Constitution of the Republic of Latvia). It has to ensure equal possibilities of enjoying the right, guaranteed by law, to every tenant.
2. To create conditions for the transition of economy to the principles of market relations, i.e. economical development on the basis of private initiative, liquidation of the state monopolies in the commercial activities, structural reorganisation of the national economy and renewal of justice, already on March 20,1991 the Supreme Council of the Republic of Latvia adopted the Resolution " On the State Property and Basic Principles of its Conversion". It was determined that conversion of the state property among others includes also privatisation of the state property, which should be accomplished,

taking into consideration peculiarities of sectors of national economy, the necessity of demonopolization as well as readiness of natural and legal entities to obtain the state property. It was envisaged that the privatisation of such a state property, which has no former owners or what the former owners have not applied for, shall be realised in compliance with the laws of the Republic of Latvia and on the basis of purchase of the property for currency circulating in the Republic of Latvia and other negotiable instruments.

March 3, 1992 Supreme Council of the Republic of Latvia Resolution "On the Concept of Privatisation of the State and Local Government Property and the Preparation Programme" envisages- in compliance with a special law- sale of apartment houses and apartments as one of the ways of privatisation of the state and local government property.

On the basis of the above viewpoints, on June 21, 1995 the Saeima adopted the Apartment House Privatisation Law, and its goal was to develop the real estate market and stimulate the up-keep of apartment houses, while protecting the interests of residents. The right of the residents to take part in the privatisation process of the apartments determined by this Law may be limited only under the procedure envisaged by the law. Thus, all the inhabitants of the state are guaranteed equal possibilities of realisation of the right.

3. Entry in the Land Book confirms that on September 7, 1995 the property right to the real estate at No.57 Elizabetes Street, Riga was fixed as the State of Latvia property. The building was an apartment house, thus the Apartment House Privatisation Law shall be applied to it.
4. With the disputable act the real estate at No.57 Elizabetes Street, Riga was not invested in the equity capital of the state stock company, but the Cabinet of Ministers only confirmed the investment, because the State Stock Company "Rosme" was renamed the State Stock Company "The Agency of the Diplomatic Service". Investment of the above state property into the equity capital of the Stock Company "Rosme" was carried out under Regulations No.717. On the basis of Regulations No.334. the real estate at No.57 Elizabetes Street, Riga was fixed on the name of the State Stock Company "Rosme". All the above Regulations are interconnected. Therefore to evaluate conformity of the disputable act with the Apartment House Privatization Law, one should examine also the legitimacy of Regulations No.717 and No.334 at the moment of their adoption, even though they are not any more valid.
5. To evaluate conformity of the part of Regulations No.717, envisaging incorporation of the apartment house at No.57 Elizabetes Street, Riga into the equity capital of the State Stock Company "Rosme" with Item 2 of the Transitional Provisions of the Apartment House Privatisation

Law, conditions of the above Item should be interpreted together with Article 74 of the Law. Article 74 of the Apartment House Privatisation Law envisages two possibilities- either to hand the state apartment house over for privatisation or to preserve it as state property (if there is a special resolution of the Cabinet of Ministers).

The Cabinet of Ministers has not taken its stand about preserving the building at No.57 Elizabetes Street, Riga as a state property and not privatising it. Groundless is reference of the representative of the Cabinet of Ministers to Resolution No.53. Its objective was to provide the banks with working premises, making use of the untenanted rooms of the above apartment house and not exclude the apartments of the house from privatisation. The Decision on not privatising an apartment house and preserving it as a state property could be adopted only after July 25, 1995, i.e., after the Apartment House Privatisation Law took effect and on the basis of the fourth part of Article 74 of the Law. Thus, the building at No 57 Elizabetes Street, Riga is subject to privatisation.

Item 2 of the Transitional Provisions of the Apartment House Privatisation Law determines the procedure of privatisation. Any other activities, which are not in compliance with the procedure, determined by this Law, do not meet the requirements of Item 2 of the Transitional Provisions regardless of the fact whether the activities may or may not be qualified as alienation. Thus both: incorporation of the apartment house at No 57. Elizabetes Street, Riga in the equity capital of the state stock company and confirmation of it are unconfomable with Item 2 of the Transitional Provisions of the Apartment House Privatisation Law.

6. Regulations No. 717 and No. 334 are not at variance with Item 3 of the Transitional Provisions of the Apartment House Privatisation Law as at the time of passing the Regulations the Law forbade only mortgaging of state and local governments apartment houses.
7. Only after passing Regulations No.717 and No. 334 the Transitional Provisions of the Apartment House Privatisation Law were supplemented with Item 13. Taking into consideration the notion of the Law, this Item envisages to exclude from the equity capital of the state stock companies only those state owned apartment houses, which had been included in it before the Apartment House Privatisation Law took effect. Therefore this Item of the Transitional Provisions shall not be applied to the apartment house at No. 57 Elizabetes Street, Riga, which is included in the equity capital of the State Stock Company "Rosme".

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

the Constitutional Court

DECIDED:

1. To declare the Cabinet of Ministers March 18, 1999 Regulations No.128 "On the State Stock Company "The Agency of the Diplomatic Service"" concerning confirmation of the state property investment- i.e. concerning the real estate at No.57 Elizabetes Street, Riga- as the equity capital of the State Stock Company "The Agency of the Diplomatic Service" as **unconformable** both with Article 74 of the Law "On the Privatisation of State and Local Governments Apartment Houses " and Item 2 of the Transitional Provisions of the Law and **null and void from the moment of its adoption.**
2. To declare the Cabinet of Ministers November 23, 1995 Regulations No.717 " On the Share Capital of the State Stock Company "Rosme"" concerning incorporation of the state property investment-i.e. concerning the real estate at No.57 Elizabetes Street, Riga- in the equity capital of the State Stock Company "Rosme" **as not being in compliance** both with Article 74 of the Law "On the Privatisation of State and Local Government Apartment Houses" and Item 2 of the Transitional Provisions of the Law and **null and void from the moment of its adoption.**
3. To declare the Cabinet of Ministers August 14, 1996 Regulations No. 334 "On the State Stock Company "Rosme"" concerning confirmation of the state property investment – i.e. concerning the real estate at No.57 Elizabetes Street, Riga – as the equity capital of the State Stock Company "Rosme" and its registration in the Land Book on the name of the State Stock Company "Rosme" as **unconformable** with both- Article 74 of the Law "On the Privatisation of State and Local Governments Apartment Houses" and Item 2 of the Transitional Provisions of the Law and **null and void from the moment of its adoption.**

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

The Judgment was announced in Riga, on October 31, 2000.

Chairperson of the Constitutional Court

Ilze Skultāne

Justice of the Constitutional Court

Juris Jelāgins

Justice of the Constitutional Court

Romāns Apsītis