THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

Riga, October 16, 2006

in case No. 2006-05-01

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

On the basis of the claim by twenty deputies of the 8th. Saeima – Valērijs Agešins, Andrejs Aleksejevs, Aleksandrs Bartašēvičs, Martijans Bekasovs, Vladimirs Buzajevs, Boriss Cilevičs, Oļegs Deņisovs, Sergejs Fjodorovs, Aleksandrs Golubovs, Jānis Jurkāns, Nikolajs Kabanovs, Andrejs Klementjevs, Vitālijs Orlovs, Jakovs Pliners, Ivans Ribakovs, Juris Sokolovskis, Igors Solovjovs, Andris Tolmačovs, Jānis Urbanovičs and Aleksejs Vidavskis

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Item 1), 17 (Item 3 of the third Paragraph) and 28^1

in written proceedings at September 26, 2006 Court session reviewed the matter

"On the Compliance of Section 46, Paragraphs six, seven, eight and nine of the Radio and Television Law with Sections 58 and 91 of the Republic of Latvia Satversme (Constitution)".

The establishing part

1. On August 24, 1995 the Republic of Latvia Saeima (the Parliament) passed Radio and Television Law, which determines the procedure of formation, registering, operation and supervision of electronic mass media, which are in the Republic of Latvia jurisdiction.

By this Law was created a new state institution – the National Radio and TV Council (hereinafter – the Council). In accordance with Section 41 (Paragraph 1) of the Radio and Television Law the Council represents the interests of the society in the section of electronic mass media and shall follow that the Republic of Latvia Satversme (Constitution), the Radio and Television Law and other laws be observed and freedom of expression and information be guaranteed.

2. In Section 46 - the sixth, the seventh, the eighth and the ninth Paragraphs – (hereinafter – the impugned norms) competence of the Council has been determined.

Section 46, Paragraph 6 of the Radio and Television Law determines that ” the Council shall issue broadcasting and re-broadcasting specific licenses (following competition or upon request) as well as cable TV and cable radio registering certificates”.

Section 46, Paragraph 7 of the Radio and Television Law establishes that ”the Council shall:

1) file a register of broadcasters on the basis of the issued broadcasting and re-broadcasting specific licenses, cable TV, cable registration radio registration certificates;
2) collect, compile and analyse the information about electronic mass media and their activities and development in Latvia and abroad;

3) contact institutions specializing in electronic mass media operation and development in other states;
4) order audience research and other research campaigns on problems of electronic mass media activities and development to ensure the functions (competent decisions) of the Council;
5) collect and analyse proposals and complaints of the audience and other information on electronic mass media operation;
6) require copies of recorded programs in cases of complaints, save the copies till the end of the final reviewing of the complaint".

Section 46, Paragraph 8 of the Radio and Television Law establishes that "the Council shall control the observing of this Law by:

1) taking account of the complaints of the audience;
2) controlling the recording of the programs of broadcasters;
3) making selective inspections of program contents and quality".

In its turn in Section 46, Paragraph 9 it is determined that "the Council shall review the material on infringements in the field of electronic mass media, and depending on the gravity, recurrence and degree of potential danger shall decide to:

1) warn the broadcaster;
2) draw up an administrative protocol and submit it to a court;
3) cancel the broadcasting or re-broadcasting license, cable TV, cable radio registration certificate or cease the operation;
4) submit a claim to court on termination of broadcasting operation;
5) send the material to law enforcement institutions to decide on initiation of the criminal case".

3. The submitter of the claim – **twenty Saeima deputies –** request to declare the impugned norms as unconformable with Sections 58 and 91 of the Satversme.

The submitter of the claim stresses that first of all one has to establish the contents of Section 58 of the Satversme. They hold that in accordance with the notion of Section 58 of the Satversme all the State administrative institutions, which experience the right of passing external individual legal (also administrative) acts against unlimited range of persons, shall be under the authority of the Cabinet of Ministers. Autonomous establishments, which create their relations with persons on the basis of use (rendering services) of the establishment, may be out of the Cabinet authority.

To their mind Section 58 of the Satversme shall be interpreted as an instrument, which allows the Cabinet of Ministers – directly or with the mediation of the respective ministry – to realize the institutional power over the institutions of state administration.

The submitter of the claim especially stresses that Section 58 of the Satversme refers to the subordination of administrative institutions. In its turn subordination of all State institutions, inter alia also the local governments and other juridical persons of derived public law (derived public persons), to the Cabinet of Ministers has been determined in Section 1 of the Satversme as interpreted in conjunction with Section 58 of the Satversme. Functional subordination, following from Section 1 of the Satversme includes the whole State administration in its wider sense and the Cabinet of Ministers realizes the above subordination with the help of other instruments (not those of subordination and supervision relations), for example with the normative acts, which the Cabinet of Ministers passes under the procedure of management.

When analysing the status and functions of the Council, it is established in the claim that the Council is an autonomous competent institution and a derived public person. Side by side with the functions, which the law has endowed the Council with and which cannot be regarded as the functions of power, administrative power functions of the State management have clearly been envisaged to the Council in the impugned norms.

The submitter of the claim concludes that in a democratic society are needed both – public broadcasting organizations and independent from the state power (especially from the Parliament, politicians, government and officials) autonomous structure of those broadcasting organizations, realized by the public itself. Objectively, such and institution shall be to the maximum independent from the Cabinet of Ministers.

The State may appoint derived public persons in order to ensure realization of the above functions independently to the maximum from the political influence, but only the use (rendering of services) and functions, connected with it, shall be anticipated for such institutions, thus ensuring moderation of the authority. The authority, envisaged in the impugned norms, cannot be vested to a competent autonomous institution. If an institution is granted the certain functions determined in the impugned norms, then – in accordance with Section 58 of the Satversme – such an institution shall be under the subordination of the Cabinet of Ministers.

The submitter of the claim expresses the viewpoint that in order of its status to be in compliance with Section 58 of the Satversme the Council shall be prohibited to realize State administration as regards commercial broadcasters. To the mind of the submitter these functions shall be assigned to a State administration institution, which is subordinated to the Cabinet of Ministers. Only those functions, which ensure to the society services to be rendered by public radio and public television, shall be left to the Council so that the society is able to use public radio and public television.

As regards unconformity of the impugned norms with Section 91 of the Satversme the submitter of the claim points out that in accordance with Section 4 of the Radio and Television Law electronic mass media are divided into public (Latvian Radio and Television) and commercial (created by physical or juridical entities) broadcasters. In the advertisement market the public

broadcasters compete with commercial broadcasters and under this competition, regardless of the objectives of their creation, all broadcasters are in equal and comparable circumstances. The Council, when realizing authority, envisaged in the impugned norms, is engaged in State administration regarding commercial broadcasters, but at the same time it is not subjected to the hierarchic control of the State administrative power and realizes different attitude to the commercial broadcasters if compared to that to the public broadcasters.

To the mind of the submitter of the claim the activities in practice of the Council confirm the above different attitude. The Council, being the administrator of the State capital share in public broadcasting organizations, is the initiator of the greatest number of amendments to the Radio and Television Law. Even though in compliance with Section 45, Paragraph 2 of the Radio and Television Law the duty of the Council has to support equal grounds of existence and harmonic development for all electronic mass media, the Council has used its influence to the advantage of the public broadcasters and to disadvantage for the commercial broadcasters.

4. The institution, which has passed the impugned act – **the Saeima** in its written reply points out that the impugned norms are in conformity with Sections 58 and 91 of the Satversme and requests the Constitutional Court to declare the claim as ungrounded and reject it.

The Saeima recognizes that the Council is a derived juridical entity of public law, which – by balancing different interests, represents public interests in the sector of electronic mass media.

It is indicated in the written reply that one cannot agree with the offered by the submitter of the claim division of the State administrative institutions into institutions, which realize the functions of administrative power and autonomous institutions, which render services to its users. The Saeima stresses that such a division of institutions is abstract and not well grounded in all cases.

The State administration may realize its functions in several ways, namely, by realizing administrative power, rendering public services or performing public business.

The Saeima points out that every Satversme norm shall be directly applied and no other norm of a lower legal force shall be at variance with it. Every norm of a lower legal force shall be interpreted and applied in such a way that it is not at variance with the legal norm of higher legal force.

The Saeima stresses that Sector 41 of the Radio and Television Law, which determines the legal status of the Council, shall not be contrasted with Section 58 of the Satversme. As the Council is a derived public person, to it refers Section 8, Paragraph 1 of the State Administrative Structure Law. Besides, neither in the impugned norms nor in other norms of the Radio and Television Law also the opposite has been determined, namely, that the Council is not subordinated to the Cabinet of Ministers.

The Saeima holds that the Radio and Television Law does not prevent the Cabinet of Ministers in the framework of the law to realize supervision of the activities of the Council. To the mind of the Saeima, the Cabinet of Ministers does realize supervision of the Council, for example, in accordance with the mediation of the subordination mechanism, determined in the norms of the Law on Budget and Financial Administration.

On its status the Council, regardless of the fact what determined in the law functions it performs, is under the supervision of the Cabinet of Ministers. Thus the Saeima holds that the impugned norms, notwithstanding what competence they envisage for the Council, are not at variance with Section 58 of the Satversme.

It is pointed out in the written reply that one cannot understand from the claim in what a way the authority of the Council, determined in the impugned norms, would violate Section 91 of the Satversme.

Activity of public broadcasters is not of business nature and they are not in a more privileged and even equal position with the commercial broadcasters. As the commercial broadcasters have been created and are engaged as commercial companies, the main objective of its activities is profit. In their turn gaining profit is prohibited to public broadcasters. Thus the competition and different interests of public and commercial broadcasters may refer to the program concepts but not to gaining profit.

In case when the commercial broadcaster has any doubts about the legality and usefulness of the Council activities, it may appeal against the Council decision or require compensation for the losses arising as the result of the activities of the Council.

5. **The Council** has expressed the viewpoint that the impugned norms, which determine the competence of the Council, comply with Sections 58 and 91 of the Satversme.

The Council stresses, ” in democratic states the air (ether) is a public resource, which shall be used for the benefit of the society”, inter alia also when realizing the public right to receive information. Reaching of the relevant aims may be insured only with the help of the institution, endowed with authority of supervision, which in many sectors is independent of the government.

In the practice of European states the main supervision principles of the sector of airtime have been elucidated. First of all an undivided regulator – a specific institution shall be created for the airtime sector. Secondly, supervision of this regulator shall be carried out from ”a very close distance” to the executive power. The functional self-dependency of the above regulator is substantiated

by the necessity to ensure independence of mass media. Several instruments of the European Union and European Council envisage such a status of the Council.

In the same way the Council informs that on December 13, 2005 the European Commission has announced the new wording of the Recommendation ”Television without Borders”, which at the moment is being discussed in the Member States. In Item 47 of the Preamble of the new wording of the Recommendation it is envisaged ”the regulators shall be independent of national governments as well as of the providers of audio-visual media, so that they are able to objectively, transparently carry out their duties and make a contribution to diversity of viewpoints”.

6. **The State Human Rights Bureau** has expressed the viewpoint that the impugned norms comply with Section 91 of the Satversme.

To the mind of the Human Rights Bureau, it is impossible to unequivocally state that public and commercial broadcasters are in equal and comparable circumstances. Even if one might hold that public and commercial broadcasters are in equal and comparable circumstances because both of them compete in the advertisement market, however one shall take into consideration that the duties (tasks) of these broadcaster groups differ.

Besides, the submitter of the claim does not explain in what a way the impugned norms create a differentiated attitude to broadcasters. The State Human Rights Bureau points out: the impugned norms do not determine that the Council shall treat public and commercial broadcasters differently, when taking decisions on imposing administrative fines, checking the complaints of the audience and listeners and realizing other functions, determined in the impugned norms.

The State Human Rights Bureau concedes that in practice the Council, when realizing its competence, established in the impugned norms, in reality might not ensure equal attitude, however, the impugned norms permit realization of equal attitude.

7. **The State Chancellery** points out that the Radio and Television Law determines the legal status of the Council. In accordance with Section 41, Paragraph 1 of this Law the Council is and independent institution – competent autonomous institution. Besides, one has to take into consideration that the Council is formed by the Saeima and financed from the funds of the State budget.

   The State Chancellery expresses the viewpoint that the Council does not comply with the features of a derived public person, because in accordance with Section 50, Paragraph 1 of the Radio and Television Law it is financed from the funds of the State budget. Thus it is not feasible to apply Section 8, Paragraph 1 of the State Administration Structure Law.

   The State Chancellery, after assessing the norms of the Radio and Television Law, points out that the legal regulation of the status of the Council does not comply with the regulation of the State Administration Structure Law concerning institutions of direct administration or indirect administration. To include an institution into the group of direct state administration or indirect administration as well as to establish subordination of an institution to the Cabinet of Ministers, this institution shall comply with the features determined in the State Administration Structure Law, besides the mechanism of subordination shall be determined as well – namely, control of the Cabinet of Ministers over the institution and the responsibility of the institution for the accomplishment of the duties, delegated to the Council, shall be mentioned. The State Chancellery expresses the viewpoint that the Cabinet of Ministers has not delegated any administrative assignments to the Council.

The Cabinet of Ministers to the mind of the Chancellery is not competent to take decisions in cases connected with the Council and its decisions. Realization of supervision is not possible either as the Cabinet of Ministers has not been endowed with the supervision mechanisms, which are determined in Section 7, Paragraph 5 of the State Administration Structure Law. The Cabinet of Ministers confirms the draft law on the State budget for every certain financial year, however, that does not ensure for the Cabinet of Ministers the possibility of realizing supervision over the Council.

Thus the State Chancellery does not agree with the viewpoint of the Saeima that the Council is under the supervision of the Cabinet of Ministers, which is expressed in the Saeima written reply.

8. After getting acquainted with the materials in the case both – the submitter of the claim and the institution, which has passed the impugned act, expressed their written viewpoint.

8.1. The submitter of the claim points out that the Council shall be regarded as a derived public person. Even though the Council does not have the property and budget of its own, however this circumstance does not change the status of the Council.

Public broadcasters and commercial broadcasters to their mind are in equal and comparable circumstances as they are mutually competing in the advertisement market. Both – the public broadcasters and the commercial broadcasters are partly financed from the advertisement income.

8.2. The Saeima expresses the viewpoint that the Council has been formed and the impugned norms adopted to ensure the best possible management in the respective sector of State administration.

The Saeima also points out: the circumstance that the Council is financed from the State budget does not change the status of the Council as the juridical entity of public law. The Saeima holds that in the above circumstances one has to take into consideration the will of the legislator, which was expressed when forming the Council but not the conformity of the Council with definitions incorporated into the law. The legislator, when forming State institutions, takes into consideration not only the conclusions of legal sciences but also the concrete necessities of life and other circumstances.

The Saeima holds that subordination is always connected with responsibility. The members of the Council, who are confirmed by the Saeima, are responsible for the activities of the Council. The Cabinet of Ministers has not been made free from the responsibility for the Council activities, as there are in its competence several issues, connected with the ensurance of the performance of the Council, for example, finances and the normative regulation.

The concluding part

9. The submitter of the claim has contested the compliance of only separate functions of the Council with Section 58 of the Satversme. However, to find out whether Section 58 of the Satversme permits granting the competencies, determined in the impugned norms, to the Council, first of all the conformity of the status of the Council itself with Section 58 of the Satversme shall be established.

10. Section 58 of the Satversme determines that ”the administrative institutions of the State shall be under the authority of the Cabinet”. This is one of the norms, which ensure realization of the principle of separation of the state power.

10.01. The principle of the separation of the state power manifests itself in the division of the State power into legislative, executive and judicial power, which are being realised by independent and autonomous institutions. This principle guarantees balance and mutual control among them to avert tendencies of usurpation of power and favour moderation of power [*sk. Satversmes tiesas 1999. gada 1.oktobra spriedumu lietā Nr. 03-05 (99) secinājumu daļas 1. punktu; see the Constitutional Court October 1, 1999 Judgment in case No.03-05 (99); Item 1 of the concluding part]*.

In a democratic law-governed state power is divided so as to reach the aims of the separation of power. In its turn the necessity of reaching the aims of separation of power allows deviations from the formal realization of the principle of separation of power. In constitutional practice particular deviations from the principle of separation of power may be regarded as admissible, if it makes the realization of functions of the state power more efficient, strengthens independence of a certain institution from another power or secures functioning of mutual balance and counterbalance system of the three powers (*sk. Satversmes tiesas 2005. gada 21. novembra sprieduma lietā Nr. 2005-03-0306 7. punktu; see the Constitutional Court November 21, 2005 Judgment in case No. 2005-03-0306, Item7).*

10.2. In accordance with the principle of separation of power the State power is functionally divided into activities of legislation, court adjudication and executive power. In legal theory and court practice the legislative and court adjudication activities are usually defined. In its turn, the executive power is that activity of the State, namely, realization of the state power, which is neither legislation nor court adjudication.

Legislature is passing of laws, i.e., the right to regulate some issue by law (*sk. Satversmes tiesas 2005.gada 16. decembra sprieduma lietā Nr. 2005-12-0103 12. punktu; see the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103, Item 12).* In its turn adjudication means solution of the

dispute in a contradistinction process between two or more parties on the basis of legal norms (*sk.Satversmes tiesas 2006.gada 14. marta spriedumu lietā Nr.2005-18-01 16.1 punktu; see the Constitutional Court March 14, 2006 Judgment in case no. 2005-18-01, Item 16.1).* Thus realization of all the other State competence shall be regarded as the function of the executive power.

10.3. However, such division of realization of State functions does by no means imply that the State shall form only three constitutional institutions, so that each of them completely realizes one of the three state functions. For the division of power to reach its objective, separate functions of power shall be passed over to different constitutional institutions.

In the Satversme the Latvian State competence is divided among the institutions of constitutional State power mentioned in the Satversme – the body of Latvian citizens, the Saeima, the State President, the Cabinet of Ministers, the State Control, the courts and the Constitutional Court.

10.4. In the Satversme the State competence is thoroughly divided between the constitutional institutions of the State power. Thus there can exist no State competence, which has not been vested to this or that constitutional institution of the State power, in its turn the competency aggregate of constitutional institutions of the State power creates the collective competence of the State [*sk.: Levits E. Valsts un valsts pārvaldes juridiskā struktūra; Jaunā pārvalde, 2002, Nr. 1 (31)// see: Levits E. The Legal Structure of the State and the State Administration; The New Administration, 2002, No. 1 (31)]*.

The Satversme has delegated the executive power to the competence of the Cabinet of Ministers, even though to ensure separation of power separate executive power activities have been delegated also to other constitutional institutions. Therefore it is possible to conclude that those activities of the executive power, which have not been delegated to other constitutional

institutions, are within the competence of the Cabinet of Ministers and it is responsible for realization of them.

11. Realization of the executive power functions is the main duty of the Cabinet of Ministers; besides, it is such a huge duty that the Cabinet of Ministers is not able to do it. Therefore the Satversme envisages that the Cabinet of Ministers may form administrative institutions and delegate to them part of their competence, by the help of mechanism of subordination controlling their activities, at the same time still having the responsibility for the implementation of the delegated duties [*sk.: Levits E. Valsts un valst pārvaldes juridiskā struktūra; Jaunā pārvalde, 2002, Nr. 1 (31)// see: Levits E. The Legal Structure of the State and the State Administration; The New Administration, 2002, No. 1 (31)]*.

The State administration institutions realize the administrative (State administration) functions of the executive power, which together with the political functions of the executive power, realized by the Cabinet of Ministers, create the competence in the sector of the executive power, assigned to the Cabinet of Ministers by the Satversme. For the Cabinet of Ministers to undertake the political responsibility over realization of the whole competence in the sector of executive power assigned to it, subordination of the State administration to the Cabinet of Ministers is a necessity, namely, the Cabinet of Ministers shall have at its disposal such legal mechanisms, which ensure adequate activity of the State administration.

Subordination, as it in accordance with Section 57 of the Satversme is determined in the State Administration Structure Law is realized in the form of subordination or supervision. In accordance with Section 7, Paragraph 4 of the State Administration Structure Law subordination or control means the rights of higher institutions or officials to issue orders to lower institutions or officials, as well as to revoke decisions of lower institutions or officials. In its turn supervision, as it is determined in Section 7, Paragraph 5, means the rights of

higher institutions or officials to examine the lawfulness of decisions taken by lower institutions or officials and to revoke unlawful decisions, as well as to issue an order to take a decision in case of unlawful failure to act.

12. As the State administration structure shall be subordinated to the Cabinet of Ministers, the State Administration Structure Law envisages the principle of unity of the State administration structure. In accordance with Section 6 of the State Administration Structure Law " the State administration is organized in a united hierarchic system. No institution or official of the administration shall exist out of this system".

In the legal science it is also recognized that all the State administration institutions, regardless of the fact whether the institution realizes functions of power or renders services to the users – shall be subordinated to the Cabinet of Ministers. " Section 58 of the Satversme determines that the administrative institutions of the State shall be under the authority of the Cabinet – concisely, strictly and clearly. No exceptions are envisaged" [*Bišers I. Vēlreiz par valsts pārvaldes institucionālajam reformām; Jurista Vārds, 2000.13. janvāris, Nr. 1 (154)// Bišers I. Once more about the Institutional Reforms of the State Administration; The Word of the Lawyer, January 13, 2000, No. 1 (154)]*.

13. There is no dispute in the matter about the fact that the Council realizes a function of a local government, namely, it neither adjudicates nor passes laws. Thus it is necessary to establish whether the Council is subordinated to the Cabinet of Ministers.

13.1. In accordance with Section 41 of the Radio and Television Law the Council is a public entity of law (a derived public person). Neither the submitter of the claim nor the Saeima question the status of the Council. Only the State Chancellery points out that the status of the Council partly does not comply with the features of the derived public person, incorporated in the State Administration Structure Law (*sk.: lietas*

materiālu 2. sējuma 168.lpp.// see Vol. II, p. 168 of the materials of the matter).

Section 1, Paragraph 2 of the State Administration Structure Law determines that ”a derived public person is a local government or other public person established by law or on the basis of law. Such public person has been conferred its own autonomous competence by law, which includes also establishing and approval of its own budget. Such a person may have its own property”. One may agree with the conclusion of the State Chancellery that the Council does not comply with the features determined in the above norm, because – in accordance with Section 50, Paragraph 1 of the Radio and Television Law the Council is financed from the funds of the State budget. As the State budget is confirmed by the Saeima, the Council has not been conferred the competence to form and confirm its budget (*sk. lietas materiālu 2. sējuma 168.lpp.// see Volume II p. 168 of the materials of the case).*

To establish the status of the Council, vital is the will of the legislator at the time of passing the Radio and Television Law. Section 41 of the Radio and Television Law *expressis verbis* determines that the Council is a competent autonomous institution and a legal entity. The Saeima correctly stresses that the Satversme does not prohibit forming of a derived public person in the State, which shall be financed from the State budget (*sk. lietas materiālu 2. sējuma 188.lpp.//see Vol.II, p. 188 of the materials of the matter).* Such a situation may be explained with the Republic of Latvia being in a certain transition period, when arrangement of the State administration system in accordance with the requirements of the Satversme and a democratic, law-governed State is necessary (*sk. lietas materiālu 2. sējuma 193.-194. lpp.// see Vol.II, pp. 193-194 of the materials of the cases).*

Thus it can be concluded that the Council is a derived legal entity of the public law.

13.2. The Saeima expresses the viewpoint that the Council is subordinated to the Cabinet of Ministers. The Saeima substantiates the above conclusion with the fact that the Council is a derived public person, but the Radio and Television Law does not determine a concrete form and content of subordination. Thus the Saeima holds that the second sentence of Section 8, Paragraph 1 of the State Administration Structure Law " Unless otherwise prescribed by the law, the relevant derived public person shall be under the supervision of the Cabinet" shall be applied (*sk. lietas materiālu 1. sējuma 199.lpp.//see Vol. I, p. 199 of the materials of the case).*

When acquainting oneself with the materials elaborated for the State Administration Structure Law, one cannot agree with the above viewpoint of the Saeima. Section 8 of the State Administration Structure Law refers to those legal entities of derived public law, the status of which in the State administrative system the legislator had intended to put in order with this law. The conception of the State Administration Structure Law testifies that the law does not determine the legal status of separate legal entities of the public law, inter alia also the status of the Council (*sk. : Valsts pārvaldes iekārtas koncepcija''//see: The Conception of the State Administration Structure / Latvijas Vēstnesis, 200, 26.06, No. 95).* The legislator had envisaged a specific regulation for the solution of the problems of the Council as well as other independent institutions.

It is inadmissible that Section 8 of the State Administration Structure Law is attributed to those issues, which the legislator – when adopting this law – has not envisaged to regulate.

13.3. In addition to the above the Saeima points out that the Radio and Television Law does not prohibit the Cabinet of Ministers to supervise the activities of the Council and as the matter of fact the Cabinet of Ministers does it. To the mind of the Saeima subordination of the Council to the Cabinet of Ministers is ensured by the fact that in accordance with the Law on the Management of Budget and Finances the budget of the Council is claimed under the general procedure and the Council shall submit to the Cabinet of Ministers an annual account for the use of the budget as well as a report on other issues, which are connected with the budget management (*sk. lietas materiālu 1. sējuma 199.-200. lpp.//see Vol.I pp. 199-200 of the materials of the matter).*

The submitter of the claim has reasonably indicated that the procedure of formation of the Council budget is not a well-enough mechanism to ensure subordination of the Council to the Cabinet of Ministers (*sk. lietas materiālu 2. sējuma 194.lpp.//see Vol II, p. 194 of the materials of the case).*

The State Administration Structure Law determines that the minimum form of subordination over the institution of the State administration is being of this institution under the supervision of the Cabinet of Ministers, namely, the higher institution shall have the right of *post factum* controlling and revoking or amending the decision of the lower institution, if it is unlawful. The control over the activities of a State administration institution is ensured by the mechanism of supervision (*sk.: Valsts iekārtas likuma koncepcija; see: The Conception of the State Administration Structure Law// Latvijas Vēstnesis, 2002, 26.06, Nr. 95).*

As the Radio and Television Law does not envisage such rights to the Cabinet of Ministers, one cannot hold that the Council is under the supervision of the Cabinet of Ministers.

13.4. It is pointed out in the written reply that no norms, which forbid the Cabinet of Ministers to realize supervision over the activities of the Council, have been incorporated in the Radio and Television Law. The Saeima holds that Section 58 of the Satversme envisages that the Council shall be under the supervision of the Cabinet of Ministers and the constitutional norm has to be applied directly (*sk. lietas materiālu 1. sējuma 199.lpp.// see Vol. I, p. 199 of the materials of the matter).*

One cannot agree with the viewpoint that the Radio and Television Law envisages the right of the Cabinet of Ministers to supervise the activities of the Council. Quite to the contrary – the Radio and Television Law separates the Council from the State administration, dissociates from the influence of the Cabinet of Ministers (*sk. lietas materiālu 2. sējuma 170.lpp.// see Vol. II, p. 170 of the materials of the matter).*When discussing the amendments to the Radio and Television Law, Linards Muciņš - the head of the 7th. Saeima Legal Affairs Committee - has clearly expressed the viewpoint of the legislator on the issue of subordination of the Council to the Cabinet of Ministers: ” The Latvian National Radio and Television Council is a very specific institution. It is not under the supervision of the Cabinet of Ministers” (*Latvijas Republikas 7. Saeimas rudens sesijas 5. sēdes 2002.gada 9. oktobra stenogramma// Verbatim report of the Saeima October 5, 2002 5th. meeting of the autumn session).*

Thus it can be concluded that the Council is not subordinated to the Cabinet of Ministers.

14. Taking into consideration the fact that the Council as a State administration institution is not subordinated to the Cabinet of Ministers it is necessary to establish whether such a status of the Council is not at variance with the Satversme.

When analysing verbatim reports of the Constitutional Assembly, 1925 Law on the Structure of the Cabinet of Ministers and 1928 Law on the Structure of Ministries the Constitutional Court has concluded that the will of the legislator, when adopting Section 58 of the Satversme has been as follows: to unite the whole administrative system, not dividing its institutions into degrees or levels of subordination [*sk. Satversmes tiesas 1999. gada 9.jūlija sprieduma lietā Nr. 04-03(99) secinājumu daļas 2.punktu// see the Constitutional Court July 9, 1999 Judgment in case No. 04-03(99);Item 2 of the concluding part]*.

Even though the structure of the State administration institutional system has noticeably changed since 1922, the sense of Section 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 [*sk. Satversmes tiesas 1999. gada 9.jūlija sprieduma lietā Nr. 04-03(99) secinājumu daļas 2. punktu// see the Constitutional Court July 9, 1999 Judgment in case No. 04-03 (99), Item 2 of the concluding part]*.

15. However, subordination of the State administration institutions to the Cabinet of Ministers is not an end in itself of Section 58 of the Satversme. Determination of the unity of State administration historically was not the duty of Section 58 of the Satversme.

15.1. Section 58 of the Satversme alongside with Section 53 (the second sentence) of the Satversme precludes dualism of the executive power, namely, these norms of the Satversme exclude the possibility of the politically not responsible State President giving orders to State administration institutions and managing their activities without the consent of the accountable to the Saeima Cabinet of Ministers.

The deputy Kārlis Dzelzītis, when discussing the possibility of passing over the State armed forces to the subordination of the State President, specially stressed – ” under the Parliamentary procedure the whole

system of the executive power is subordinated to the Cabinet of Ministers, which- in its turn – is accountable to the Cabinet" (*Latvijas Satversmes sapulces IV sesijas 15. sēdes 1921.gada 26. oktobra stenogramma// Verbatim report of the constitutional Assembly October 26, 1921 15th. meeting of the IV session).* The deputy Andrejs Petrevics in the debate also protected implementation of the Parliamentary principle in the organization of executive power – "We cannot mix up two principles: the principle of the so-called pure Parliamentary system with the principle of dualistic Parliamentary system, which exists in Sweden and America. […] In America the President is the person to who belongs the whole executive power and who is responsible about the whole executive power. As concerns executive issues the Parliament is of no importance and the government is not accountable to the Parliament. The ministers are accountable only to the President and they have to do everything, which the elected by the people President requires them to do.[…] Whereas we are on the side of the pure Parliamentary principle and not on the principle of dualism"'(*Latvijas Satversmes sapulces V sesijas 13. sēdes 1922. gada 14. februāra stenogramma// Verbatim report of the Constitutional Assembly February 14, 1922 13th. meeting of the V session).*

15.2. The Parliamentary principle in the organization of the executive power is expressed in such a way that " the Cabinet of Ministers, which is accountable to the Parliament is the only active higher institution of the executive power, through which the unity of the executive power in the State is established" [D*išlers K. Dažas piezīmes pie Latvijas Republikas Satversmes projekta (tieša likumdošana un valsts presidents); Dišlers K. Some Remarks to the Draft of the Republic of Latvia Satversme (Direct Legislature and the State President)// Tieslietu Ministrijas Vēstnesis, 1921. No. 4/6, p 147]*.

The provision of Section 58 of the Satversme that the State administration institutions shall be subordinated to the Cabinet of Ministers first of all means that they are not and may not be subordinated to the State President.

15.3. The Cabinet of Ministers is the holder of the constitutional executive power in the Republic of Latvia and confidence of the Saeima is the only constitutional basis for its activities (*sk. Satversmes tiesas 1998. gada 13. jūlija spriedumu lietā No. 03-04(98) secinājumu daļas 2. punktu// see the Constitutional Court July 13, 1998 Judgment in case No. 03-04(98), Item 2 of the concluding part).* The Satversme confers separate functions of the executive power to the State President, who does not have political responsibility; however, for realization of these functions the agreement of a Cabinet member is needed (the second sentence of Section 53 of the Satversme).

In accordance with Section 58 of the Satversme executive power is completely deputed to the Cabinet of Ministers; in its turn the functions of the executive power to be *expressis verbis* entrusted to the State President shall be subordinated to the will of the Cabinet of Ministers with the mediation of the co-signature institute.

15.4. Subordination of the State administration institutions to the Cabinet of Ministers first of all constitutionally excluded passing any State administration institution to the subordination of the State President. However, Section 58 of the Satversme does not automatically require mandatory subordination of all State administration institutions to the Cabinet of Ministers.

The practice of the period between the wars testifies that not all the State administration institutions were subordinated to the Cabinet of Ministers. The Constitutional Assembly not only adopted the Satversme but by

several laws also formed the Central Election Commission and the Central Land Surveying Commission. Both the above State administration institutions were not subordinated to the Cabinet of Ministers. Objections against the existence of such institutions were raised neither by the Parliament nor by the legal science.

16. The conclusion that Section 58 of the Satversme requires subordination of all the state administration institutions to the Cabinet of Ministers, not conceding any exceptions and without assessing the constitutionally legal aim of the above subordination is based on isolated interpretation of Section 58 of the Satversme.

The Satversme is a cohesive whole and the legal norms incorporated into it are mutually closely connected. Every norm of the Satversme has its definite place in the Satversme system and no greater significance shall be accorded to any Satversme norm than has been envisaged by the will of the ”fathers” or the text of the Satversme. To more completely and objectively establish the content of separate Satversme norms, they shall be interpreted as read together with other norms of the Satversme (*sk. Satversmes tiesas 2005. gada 16. decembra sprieduma lietā Nr. 2005-12-0103 13. punktu // see the Constitutional Court December 16, 2005 Judgment in case No. 2005-12-0103,Item 13).* The principle of wholeness of the Satversme prohibits interpretation of separate norms of the Satversme as isolated from the other Satversme norms, because the Satversme as a document, which is a cohesive whole, influences the contents and sense of the norm.

16.1. Section 57 of the Satversme determines that ” the number of ministries and the scope of their responsibilities, as well as the relations between State institutions, shall be as provided for by law”.

By this norm of the Satversme regulation of mutual relations of the State administration structure and separate State institutions has been delegated to the competence of the legislator. As regards regulation of

the State administration structure only those fundamental principles are determined, which are necessary to ensure maintenance of Parliamentary system, namely, to prohibit the legislator to extend the authority of the State President in the executive power sector without amending the Satversme.

Section 57 of the Satversme allows creation of such independent State institutions, which realize separate executive power activities without being subordinated to the Cabinet of Ministers. However in this case the notion of Section 58 of the Satversme shall be observed. Section 58 of the Satversme not only prohibits the State President to become the holder of the constitutional executive power, but also determines the mechanism, by which democratic legitimisation and responsibility for realization of the competence of the State administration institution is being ensured. If, when making use of the rights to determine mutual relations of the State institutions, which are envisaged in Section 57 of the Satversme, the legislator releases a certain State institution from the subordination to the Cabinet of Ministers, it has to envisage another, but not less effective democratic legitimisation of this institution and responsibility for its activities.

The legislator, when realizing the rights conferred by Section 57 of the Satversme to release a State institution from the subordination the Cabinet of Ministers, does not enjoy a complete freedom of action. As basically the State institution shall be subordinated to the Cabinet of Ministers, the Saeima may form an autonomous state institution only in such cases, when realization of other constitutional norms requires it. Autonomous State institutions are exceptions from the principle of unity of the State administration and as such they shall be formed only in specific cases, when adequate administration in a certain section of the executive power activities cannot be ensured in a different way.

By the adoption of such law the Saeima discharges the Cabinet of Ministers from political responsibility for the authority, passed to the autonomous State institution, thus narrowing the competence of the Cabinet of Ministers in the sector of the State administration, envisaged by the Satversme. The managers of these institutions shall be responsible for realization of the competence, passed to the autonomous State institutions, as well as the Saeima itself, which – when forming such an institutions shall incorporate into the law the precise model of securing legality of the activities of the institution, the above shall maintain its independence in realization of the functions endowed to it.

16.2. In interpreting separate norms of the Satversme one shall take into consideration also section 1 of the Satversme, from which follow several principles of the democratic law-governed state.

Already at the time of elaboration of the Satversme it was recognized that the part of the Satversme, which determines organizational issues of the State structure , is only concretisation of the principles, enshrined in Sections 1 and 2 of the Satversme. ” We may expect that these principles will not only be placed at the forepart of the Constitution but shall be also – as consequently as possible – included in the further main provisions of the Constitution” [*Dišlers K. Dažas piezīmes pie Latvijas Republikas Satversmes projekta (tieša likumdošana un valsts presidents); Dišlers K. ”Some Remarks to the Draft of the Republic of Latvia Satversme (Direct Legislature and the State President)// Tieslietu Ministrijas Vēstnesis, 1921, No. 4/6, p. 139]*.

L.Muciņš has also quite reasonably pointed out that there was the necessity to interpret Section 58 of the Satversme as read in conjunction with Section 1 of the Satversme – ”our Satversme has Section 1, which stresses that Latvia is an independent democratic republic. Therefore it would not be correct to interpret all problems by Section 58 of the

Satversme, but the above problem shall be referred to and analysed by Section 1 of the Satversme as well" (*Latvijas Republikas 7. Saeimas rudens sesijas vienpadsmitās sēdes 2001. gada 15. novembra stenogramma // November 15, 2001 Verbatim Report of the 7th. Saeima eleventh meeting of the autumn session).*

16.3. In our contemporary democratic law-governed State passing all the functions of the executive power to the Cabinet of Ministers and the State administration institutions is impossible. A separate section of the State administration may be taken out of the competence of the Cabinet of Ministers and passed over to an autonomous State institution, if it has been established that a State institution subordinated to the Cabinet of Ministers will not be able to ensure adequate management.

When analysing this development aspect of democracy L.Muciņš has concluded: "And life has proved, and the development of Europe has proved that after the World War II quite a lot of institutions have been formed; concretely they are called the autonomous institutions, which are not under the supervision of the government; but at the same time respective laws have been passed about them and they realize a respective public task. And at the same time- so as to be independent from the government – they have been given quite peculiar and extensive authority" (*Latvijas Republikas 7. Saeimas rudens sesijas trešās sēdes 2002. gada 19. septembra stenogramma // September 19, 2002 Verbatim Report of the 7th. Saeima third meeting of the autumn session).*

Thus just Section 1 of the Satversme is that constitutional norm, which authorizes Saeima in certain cases when there is no other way of ensuring adequate management to form autonomous State institutions. In a democratic law-governed state releasing separate State administration institutions from subordination to the Cabinet of Ministers ensures due

management in such administration sections, which are connected with the control of the activities of other state institutions, ensures stability of prices as well as protection of certain freedoms and approximation of interests (*sk. Ministru kabineta 2005. gada 17. maijā apstiprināto Koncepciju "neatkarīgo" jeb patstāvīgo iestāžu statusa regulēšanai; lietas materiālu 1. sējuma 167. lpp. // see the Cabinet of Ministers Conception on the regulation of the status of "independent" or autonomous institutions, confirmed on May 17, 2005 ; Vol. I, p. 167 of the materials of the matter).*

However, Section 1 of the Satversme determines also strict "borders". Formation of such autonomous State institutions, the delegated functions of which it is possible to realize as efficiently also by the institution subordinated to the Cabinet of Ministers, shall be inadmissible. This constitutional norm determines also the sectors in which it is not allowed to form autonomous State institutions. In a democratic republic Parliamentary control, which is realized with the mediation of the responsible government, over the Armed Forces and State Security institutions is really important.

Section 1 of the Satversme assigns the Saeima with the duty to ensure adequate democratic legitimisation of the above institution as well as to incorporate in the laws efficient mechanisms for supervision of their activities when forming an autonomous State institution.

16.4. Such a conclusion, of interpreting of the Satversme has been made also in the drafts of the new normative legal acts. For example Section 2 of the draft of the Structure of Cabinet Law, elaborated by the State Chancellery, determines:

"1) The Cabinet of Ministers is a collegial institution, which - by the mediation of the State administration subordinated to it - realizes executive power in the name of the Republic of Latvia.

2) The Saeima by a separate law may pass concrete functions or duties, included in the sector of realization of the executive power to institutions, which are not subordinated to the Cabinet of Ministers" (*Ministru kabineta iekārtas likumprojekts; Draft Law on the Structure of the Cabinet //http://www.mk.gov.lv/doc/2005/Mklik_MK.doc.).*

In the research papers of the legal scientist it is also recognized that the Satversme allows release of several State administration institutions from subordination to the Cabinet of Ministers. "In a case, when the literal formulation of a legal norm is narrower than the logical sense of the norm or the content of the norm, extended interpretation shall be used. […] Such specific State administration institutions as the National Radio and Television Council, the Bank of Latvia are not subordinated to the Cabinet of Ministers. Thus the practice of the Latvian legislator makes one deduce that the Satversme norm on the subordination of State administration institutions shall be interpreted in a wider sense, as its literal formulation, which is included in Section 58 of the Satversme, is narrower" (*Eglītis V. Ievads konstitūcijas teorijā. ; Eglītis V. Introduction to the Theory of the Constitution // Riga, Latvijas Vēstnesis, 2006, p. 168).*

Section 58 of the Satversme permits interpretation, which ensures adequate and conformable with a contemporary democratic law-governed state administration in separate sectors of management.

It does not exclude the possibility of the legislator to consider whether amendments to the Satversme are necessary to *expressis verbis* include interpretation of this Satversme norm in the text of the Satversme.

17. The Council has been formed to represent public interests in the sector of electronic mass media and supervise, how normative acts and freedom of speech and information are observed in their activities. The Council shall

realize functions of two kinds- it supervises how the Latvian radio and Latvian television render their services to the residents of the Republic of Latvia and supervises private radio and television broadcasters (*sk. Latvijas Republikas 7. Saeimas rudens sesijas 5. sēdes 2002. gada 9. oktobra stenogrammu // see the 7th. Saeima October 9, 2002 5th. meeting of the autumn session Verbatim Report).*

Existence of the Council, which is not subordinated to the Cabinet of Ministers, is conformable with the Satversme and admissible, because the main duty of the Council is to balance competition in the sector of mass media, in which the power of information has a direct influence on the processes of elections and those of the State power. As concerns this sector the Council shall carry out activities of control and de-monopolization as well as determine restrictions to participation in the market, so that the competition of offering ensures a proportional expression on diversity of public viewpoints (*sk. Ministru kabineta 2005. gada 17. maijā apstiprināto Koncepciju "neatkarīgo"jeb patstāvīgo iestāžu statusa regulēšanai; lietas materiālu 1. sējuma 180.- 181.lpp. // see the Cabinet of Ministers Conception on the regulation of the status of "independent"ōr autonomous institutions, confirmed on May 17, 2005; Vol.I, pp. 180 –181 of the materials of the matter).*

Also Recommendations of the European Union and the practice of the European states testify that the regulator of the broadcasting sector –and the Council will be regarded as such –shall be ensured such independence, which protects it from any of political forces or economic interests (*sk. lietas materiālu 2. sējuma 140.lpp. // see Vol. II, p. 140 of the materials in the matter).* For example, the European Council Committee of Ministers in the Preamble of its December 20, 2000 Recommendation Rec(2000)23 to Member States on the independence and function of the regulator of the broadcasting sector has stressed the duty of the Member States to ensure that a wide, independent and autonomous range of mass media, which allows reflecting diversity of ideas and viewpoints exists in the democratic society. Taking into consideration the

importance of mass media in a contemporary and democratic society, the Committee of Ministers in the above Recommendation stresses the necessity to ensure for the Member States existence of a wide range of independent and autonomous mass media in the broadcasting sector. The Committee of Ministers suggests as one of the means for reaching this aim to control the regulators of the broadcasting sector in such a way that they are protected from any interference, especially that of the political forces or economical interests [*see: Recommendation Rec(2000)23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector //http://cm.coe.int/ta/rec/2000/2000r23.htm.).*

"Article 19" of the World Campaign for Freedom of Speech Memorandum about the proposal for the drafts of the Latvian Public Radio Organizations Law and the Radio and Television Law points out that the draft laws, which were being elaborated, subject public broadcasters and the regulator of the broadcasters to inadmissible control by the government (*sk. lietas materiālu 2. sējuma 149.lpp. // see Vol. II, p. 149 of the materials in the matter).* It is stressed in the Memorandum: subordination of the Council to the Cabinet of Ministers would mean that the members of the government are involved in supervision of its activities. In such a situation the regulator may not be regarded as independent from "political interests" as subordination of the Council to the Cabinet of Ministers means interference of the executive power in the control of the broadcasting sector (*see. Lietas materiālu 2. sējuma 155. lpp. // see Vol. II, P.155 of the materials in the matter).*

If the Council were formed as a State administration institution subordinated to the Cabinet of Minister then there would exist such a risk, that it would not be possible to ensure realization of Section 100 of the Satversme in the activities of the electronic mass media. In the same way it would cause inconvenience to the process of equal elections, as the State administration institution subordinated to the Cabinet of Ministers might be used in the interests of the leading political parties as well as for limitation of the election campaign of the

political parties of the opposition. Use of administrative resources in pre-election campaigns is a characteristic feature of the new democratic states. Therefore State management of the sector of broadcasting shall be carried out in such a way that it lessens the influence to the regulator of the sector of broadcasters as much as possible.

Thus the status of the Council complies with the Satversme.

18. The submitter of the claim has pointed out that the authority, conferred upon the Council by the impugned norms, does not comply with Section 58 of the Satversme either.

The competence of the Council, determined in the impugned norms is not so much connected with supervision over it as to the fact that the Latvian Radio and Latvian Television render their services to the residents of the Republic of Latvia and with the supervision of all the activities of the broadcasters. The competence of the Council in the control of both – the public and the commercial broadcasters is expressed in the impugned norms.

One may agree with the viewpoint expressed by the Saeima that there is no unified model of public and commercial broadcasters in Europe. The mechanism, which is in effect in Latvia, is rational, as the sector of broadcasting, which includes both – public and commercial broadcasters, is a unified subsection, which - for the reasons of more efficient coordination – shall be supervised by one institution. The Saeima reasonably holds that in so small as state as Latvia it would not be useful to have two functionally similar institutions and use the State budget for them both (*sk. lietas materiālu 1. sējuma 201.-202. lpp. // see Vol II, pp. 201-202 of the materials of the matter).*

What functions of the executive power are granted to separate institutions – that is mainly the issue on adequate management and efficiency of the State administration in the respective sector. The State has the duty to organize

management and administration as efficiently as possible as well as regularly control, and – when necessary – to improve the State administration system.

Section 58 of the Satversme does not prohibit conferring definite functions of the executive power to autonomous State institutions, as well as controlling with the help of legislature the division of the functions, if it is necessary for ensurance of adequate and efficient administration.

Thus the impugned norms comply with Section 58 of the Satversme.

19. The submitter of the claim holds that the impugned norms without an objective and reasonable basis establish a differentiated attitude to public broadcasters as compared with the commercial broadcasters. Therefore to his mind the impugned norms are at variance with the principle of legal equality.

This principle is incorporated in the first sentence of Section 91 of the Satversme and it prohibits the State institutions to issue such legal norms, which without a reasonable basis allow a differentiated attitude to persons, who are in equal and under certain criteria comparable circumstances *(sk. Satversmes tiesas 2001. gada 5. decembra sprieduma lietā Nr. 2001-07-0103 secinājumu daļas 3. punktu // see the Constitutional Court December 5, 2001 Judgment in case No. 2001-07-0103, Item 3 of the concluding part).*

To establish if the impugned norms comply with Section 91 of the Satversme one shall find out whether:

- persons are in equal and comparable circumstances;
- the impugned norms envisage a differentiated attitude;
- the differentiated attitude has an objective and reasonable basis, namely – whether it has a legitimate aim and whether the principle of proportionality has been observed.

20. To establish whether and which persons or groups of persons are in equal and comparable by certain criteria circumstances it is necessary to find the unifying feature of the above group.

The submitter of the claim holds that all the broadcasting organizations are in equal and comparable circumstances. As a complete financing of the State budget is not ensured for the public broadcasting organizations but there is no political will of the legislator for introducing licence fee, public broadcasters compete with the commercial broadcasters in the advertisement market.

As the Council is the holder of the State capital share in the public broadcasting organizations and carries out the duties of the general meeting of the above organizations, then the functions of supervision, determined for the Council, in the impugned norms permit partiality of the Council with regard to commercial broadcasters.

One may quite agree with the viewpoint, expressed by the State Human Rights Bureau that both groups of broadcasters compete in the advertisement market, however their tasks are different. The activities of commercial broadcasters are directed to gaining of profit; in their turn the public broadcasters are realizing the public order (*sk. lietas materiālu 2. sējuma 172.lpp. // see Vol. II, p. 172 of the materials in the matter).* Gaining of profit is prohibited to public broadcasting organizations and they have a specific status, which draws them nearer to State institutions but not commercial companies. Thus the public broadcasters should not theoretically be interested in competition in the advertisement market and gaining of potentially greater profit (*sk. lietas materiālu 1. sējuma 201.-202. lpp. // see Vol. I, pp. 201-202 of the materials in the matter).*

21. However, it cannot be completely excluded that public and commercial broadcasters mutually compete in the advertisement market; therefore it is

necessary to verify whether the impugned norms envisage a differentiated attitude to them.

In is correctly established in the viewpoint of the State Human Rights Bureau: the impugned norms do not determine that the Council, when realizing the functions, determined in it, shall differently treat public broadcasters and commercial broadcasters (*sk. lietas materiālu 2. sējuma 172. lpp. // see Vol. II, p. 172 of the materials in the matter).* Thus, the impugned norms allow ensurance of equal attitude.

As the impugned norms do not envisage a differentiated attitude they are in conformity with Section 91 of the Satversme.

22. The examples, mentioned in the claim, when potential violations of Section 91 of the Satversme have been recognized in the activities of the Council during realization of the competence determined in the impugned norms, directly concern just the practice of application of the impugned norms.

The circumstance when a State institution, realizing the competence assigned to it, in practice does not observe the principle of equality cannot serve as the basis for declaring the competence, assigned to it as unconformable with the Satversme.

The operative part

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

hereby rules;

to declare Section 46 – Paragraphs six, seven, eight and nine - of the Radio and Television Law as conformable with Sections 58 and 91 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session A.Endziņš