THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, March 8, 2006

JUDGMENT
in the name of the Republic of Latvia

in the matter No. 2005-16-01

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

with the Court secretary Arnis Žugans

in the presence of the submitter of the constitutional claim Anda Erneste, who represented also the submitter Ilmārs Ernests; the sworn advocate Egīls Radziņš – the representative of the submitter Ingūna Erneste; the sworn advocate Lauris Liepa – the representative of the submitter Baiba Paulsone and the representative of the submitter Arnis Andersons– the sworn advocate Pauls Klēbahs,

as well as the sworn advocate Juris Narkēvičs – the representative of the institution, which has passed the impugned act – the Saeima

under Section 85 of the Satversme (the Constitution), Sections 16 (Item 1), 17 (Item 11 of the first Part) and 192 of the Constitutional Court Law

on February 7, 2006 in a public hearing in Riga reviewed the case

”**On the Conformity of Section 13 of December 20, 2004 Law ”Amendments to the Law ”On Residential Tenancy”” with Sections 1, 91 and 105 of the Republic of Latvia Satversme”.**

The establishing part

1. In 1940 after the establishment of the Soviet occupational power nationalization of the private property began in Latvia. For the

implementation of it on October 28 the Presidium of the Latvian SSR Supreme Soviet passed the Decree ”On Nationalization of Spacious Buildings’’. In accordance with the Decree those buildings, the ”total useful space” of which exceeded 220 square metres in Riga and other bigger cities of Latvia and 170 square metres in smaller towns, were nationalized. Besides, all the buildings, in which State institutions were located as well as the houses, whose owners did not reside in Latvia and buildings having historical or artistic value were nationalized. In the next decades the Soviet power continued divesting properties, belonging to owners. Properties in Riga at No. 57/59 Avotu street and No. 2 Strenču street were also nationalized.

On October 30, 1991 the Republic of Latvia Supreme Council adopted the Law ”On the Denationalization of Buildings in the Republic of Latvia”, by which the above Decree and the normative acts, issued in accordance with it, were declared as null and void. On the same day the Law ” On the Return of Buildings to Their Legal Owners” was passed. Its Section 1 determines that ”the previous owners or their heirs […] shall have their ownership rights restored to buildings which were confiscated without compensation during the 1940ies – 1980ies and transferred to the management of the state or legal entities, which realized the ignorance of ownership rights and a policy of administrative arbitrariness”. In the forthcoming years on the basis of the above Laws buildings were denationalized and returned to their legal owners. In many houses lived and are still living tenants, who have concluded rental contracts before the restoration of property rights.

Both the above properties in Riga were also denationalized. The property rights to the buildings in Avotu street were restored to I.Ernests and B.Paulsone, but to the house in Strenču street to A.Andersons. In 2000 I. Ernests made a quit claim deed and presented his daughter Anda Erneste and Ingūna Erneste one third of his part of the property in the houses at Avotu street (henceforth all of them – the submitters of the claim).

There are 40 apartments in the above houses and in many of them tenants, who have concluded rental contracts before the restoration of the property rights, reside. In the materials of the matter there are 18 such contracts, which have been concluded in the period between 1969 and 1992. None of them includes limit regarding the period of time and all of them are the standard agreements of that time; reference to rent is approximately like this: the tenant undertakes the obligation to duly cover rental and communal service payments.

2. Section 12 of the Law ”On the Denationalization of Buildings in the Republic of Latvia” and Section 12 of the Law ” On the Return of

Buildings to Their Legal Owners" in its initial wording determine that the owners shall honor all leases and rental agreements previously made by present building managers. In 1994 the wording of these Sections was amended by determining that the terms of the concluded rental agreements of the present managers are mandatory to the owner.

In its turn, Section 13 of the Law " On the Denationalization of Buildings in the Republic of Latvia" and Section 13 of the Law "On the Return of Buildings to Their Legal Owners" delegated determination of the level of rents to the Council of Ministers. Now these norms are in effect in the following wording: "Rent for those tenants, who had signed the rental agreements with present managers of returned buildings, may not exceed without consent of those tenants the level of rents set by the Cabinet of Ministers".

Section 11 (the first Paragraph) of the Law "On Residential Tenancy" adopted in February of 1992 (henceforth – the Tenancy Law) anticipated that "a rental payment shall be determined on the basis of a agreement between parties, however it shall not exceed the maximum rental payment established by the government". In its turn the January 1997 Saeima Amendments envisaged that "A rental payment shall be determined on the basis of a written agreement between the parties, except in cases specified in the second, the third and fourth Parts of this Section".

The fourth Paragraph of the above Section determined: "In denationalized houses and houses, which have been returned under the procedure envisaged in the Law "On the Return of Buildings to Their Legal Owners" regarding the tenants , who have rented the apartments till the denationalization (return to the owners) the rent shall be determined on the basis of a written agreement and in accordance with the Cabinet of Ministers Regulations on the procedure of calculation of the rent.

On January 1, 2002 Amendments to the Tenancy Law took effect, which included the regulation of the maximum rent in houses denationalized and returned to the legal owners included into the Transitional Provisions of the Law. Paragraph 4 of the Provisions stresses that in the above houses, if the tenant has resided there before the restoration of the property rights, the rent shall be determined by the agreement between the parties. If no agreement has been reached then the rent shall be determined by the lessor, however, it shall not exceed 0.24 lats per one square metre of the rented area a month in 2002; 0.36 lats in 2003 and 0.48 lats – in 2004.

3. On December 20, 2004 the Saeima adopted the Law "Amendments to the Law "On Residential Tenancy", which took effect on January 1,

2005. Section 13 of this Law (henceforth – the impugned norm) includes five Amendments to Paragraph 4 of the Transitional Provisions of the Tenancy Law:

The former wording of the Transitional Provisions	**The impugned norm**
To express Item 4 in the following wording: **4.**If an apartment is located in a house denationalized or returned to a lawful owner and the tenant has used the apartment up to the restoration of the property rights, the residential tenancy payment shall be determined by a written agreement of the parties, including in the tenancy payment a portion of the residential house management expenses, which is proportional to the area of the relevant rented - out space, and the profit, but if no agreement has been reached then the lessor determines the residential tenancy payment and it during the time period up to December 31, 2004 per one square metre of the rented area of an apartment may not be more than: 1) in 2002 – 0,24 lats; 2) in 2003 – 0,36 lats; 3) in 2004 – 0,48 lats.	To express Item 4 in the following wording: **4.**If an apartment is located in a house denationalized or returned to the lawful owner and the tenant has used the apartment up to the restoration of the property rights, the residential payment shall be determined, including therein a portion of the residential house management expenses, which is proportional to the area of the relevant rented-out residential space, and the profit. The amount of the rental payment shall be determined by a written agreement of the tenant and the lessor, but if no agreement has been reached , during the time period up to 31 December 2007 the rental payment per one square metre of the rented area of an apartment may not be more than: 1) in 2002 – 0,24 lats; 2) in 2003 – 0,36 lats; 3) in 2004 – 0,48 lats; 4) in 2005 – 0,60 lats; 5) in 2006 – 0,72 lats; 6) in 2007 – 0,84 lats.
5.If the tenant, who has been using an apartment in a house denationalized or returned to a lawful owner up to the restoration of the property rights to the house to the previous owner (his or her heir), and the owner of the house has entered into a residential tenancy agreement up to 31 December, 2001, the tenant has a duty to pay the rental payment specified in the rental agreement. If the rental payment	**5.**To substitute number ”2004” with the number ”2007”.

specified in such agreement is lower than the rental payment specified in Paragraph 4 of these Transitional Provisions, the lessor may set the rental payment up to the level provided for in Paragraph 4 of these Transitional Provisions up to December 31, 2004.	
7. In increasing the residential tenancy payment in the cases referred to in Paragraphs 2,3,4,5 and 6 of these Transitional Provisions, the lessor has the duty to notify the tenant regarding the increase of the rental payment in writing at least three months in advance.	**7.** To supplement Item 7 with a sentence in the following wording: ”With regard to the increase of a rental payment up to 0.60 lats per square metre of the rented area of an apartment in accordance with the provisions of Paragraph 4, Sub-paragraph 4 of these Transitional Provisions, the right of the lessor to warn the tenant arises beginning with January 1, 2005.”
8. If a residential tenancy agreement (except the agreement referred to in Paragraphs 2 and 3 of these Transitional Provisions) has been entered into during the time period up to December 31, 2001, the rental payment specified in it may be increased during the operation of the agreement in compliance with the provisions of Section 13, Paragraph 2 of the Law.	**8. ”**If a residential tenancy agreement (except the agreement referred to in Paragraphs 2 and 3 of these Transitional Provisions) has been entered into during the time period up to December 31, 2001, as well as if the apartment is located in a house denationalized or returned to a lawful owner and the tenant has been using the apartment up to the restoration of the property rights, after December 31, 2007, the rental payment may be increased during the operation of the agreement, in compliance with the provisions of Section 13, Paragraph 2 of the Law”. To supplement the Transitional Provisions with Paragraph 14 in the following wording: ”14. The Cabinet shall develop by 1 March 2005 and implement by 1 July 2005 a State and local government support programme and compensation mechanisms for

	tenants who rent residential space in a residential house denationalized or returned to a lawful owner and who have been using such space up to the restoration of the property rights to the previous owners or their heirs".

4. **The submitters of the claim** hold that the impugned norm violates their fundamental rights, determined by Sections 1, 91 and 105 of the Satversme and request to declare it null and void from the moment of its adoption.

4.1. The viewpoint is expressed in the constitutional claim that by passing of the impugned norm principles of proportionality, trust in law as well as legal certainty, which follow from Section 1 of the Republic of Latvia Satversme (henceforth – the Satversme) have been violated.

The submitters point out that during the last 14 years the legislator consequently determined measures for limiting the rent. Taking into consideration the length of the above measures as well as the fact that by adopting July 20, 2001 Law "Amendments to the Law " On Residential Tenancy"" the legislator determined the term of cessation of the measure, the owners of apartment houses trusted (had trust in law) that the measures were of temporary nature. In their turn, the tenants had no reason to believe that the term of operation of the Transitional Provisions of the Tenancy Law would be prolonged.

They also hold that the principle of trust in law has been grossly violated by the fact that the impugned norm took effect already on the second day after its announcing, as the owners had not managed to adapt to the sudden changes.

4.2. It is pointed out in the constitutional claim that Section 105 of the Satversme simultaneously envisages both – peaceful enjoyment of the property rights and the right of the State to restrict utilization of the property for State and public interests. Restriction of the fundamental rights of the submitters of the claim, established in the above Satversme Section is determined by law and one can see its legitimate aim – protection of the interests of tenants (especially the non-prosperous tenants); however the established restriction to their mind is not conformable with its aim.

The rights of the owners to enjoy peaceful utilization of property rights have been restricted already from the time of restoration of the

property, that is, for more than ten years; and the rent, envisaged in the normative acts has not been sufficient for covering the management expenses. In their turn the normative acts make the owners of the apartment houses responsible for maintenance of the residential houses in accordance with the construction and hygienic requirements, determined in the normative acts. Adequate economic substantiation of the impugned norm has never been expressed.

4.3. The constitutional claim mentions also violation of Section 91 of the Satversme. The principle of equality, following from this norm, prohibits to simultaneously regulate by law the rent in private apartment houses and not to limit it regarding the apartments, owned by the State and the local government. Even if the State and local governments use to determine low level rent, losses are compensated from the budget. In their turn such resources are not accessible to the submitters of the claim.

4.4. At the Court session the claims, included in the application, were upheld. The representatives of the submitters **E.Radziņš** and **L.Liepa** at the Court session stressed that the property right of a person might be restricted only if the restriction was determined by law, had a legitimate aim and the principle of proportionality was being observed. They state that property rights of the submitters are restricted because the ”ceiling of the rent” in separate cases cannot cover the maintenance expenses; in their turn it is required that the house-owners take care of the property and maintain order. The above also does not allow gaining reasonable profit from the property.

L. Liepa pointed out that the aim advanced by the Saeima – to protect all the tenants of the denationalized buildings – was too extensive. When determining restrictions to property rights, the protection of a concrete social group, the tenants of which because of financial circumstances are not able to cover the rent, shall be chosen as the aim.

The representatives of the submitters express the viewpoint that for reaching the legitimate aim the state may choose different means of protection for the above group of tenants. These means shall be suitable for reaching the legitimate aim and as considerate as possible, so that the principle of proportionality is observed. However, the State, when protecting one group of residents – the tenants, substantially restricts the rights of the other group – the house-owners. They hold that it is able to reach the legitimate aim by more considerate means, for example, by introducing compensation mechanisms for a concrete group of residents. The State has not

solved this problem for many years, imposing realization of its social functions to the owners of the apartment houses. Thus the proportionality between the losses caused to the owners and the public benefit has not been observed.

5. The Saeima –the institution, which has passed the impugned norm – holds that this norm complies with Sections 1, 91 and 105 of the Satversme and requests to declare the constitutional claim as ungrounded.

5.1. In its written reply the Saeima stresses that the impugned norm has been adopted to observe in the issue to be regulated balance among the interests of the house-owners of the denationalized block, the State, the local government and the tenants of these houses.

Referring to the European Court of Human Rights Judgment in the case of Hutten - Czapska v. Poland (*Hutten-Czapska v. Poland [2005] ECHR 119)*, the Saeima points out that rent level control has a legitimate aim to ensure the social protection of the poor tenants in circumstances when there is a long-standing and acute shortage of dwellings as well as the concern about determination of groundlessly high level of rent exists. Besides, this legitimate aim shall be interpreted in a more extensive context as the dwelling problem causes violations also in the sector of other persons, for example, the right to social security and the rights of a child.

In the written reply the viewpoint is expressed that in case, if the impugned norm were not adopted, there exists a possibility of giving mass notices about rent agreements and turning out tenants from many houses.

The Saeima stresses that restriction to the rights, fixed in Section 105 of the Satversme, is proportionate with the aim to be reached, as it has been determined for short-time use in the transitional period. Even though the situation in the housing market has improved, there still exist the same objective circumstances, which required introducing of the regulated rent level. At the same time the Cabinet of Ministers, on the basis of Paragraph 14 of the Transitional Provisions of the Tenancy Law, has implemented several measures for the support of the tenants: participation of the state in paying the benefit for vacating the dwelling space, State warranty for acquisition and building of dwelling and granting State earmarked subsidies to the local governments.

The Saeima holds that the submitters exaggerate the disproportion of the received rents and the real value of the service, as in more than a

half of cases the tenants, protected by the transitional period regulation, still pay a different sum , namely, that settled by the market. In their turn the normative acts do not require from the landlords such duties, which they are not able to realize after receiving the rent, determined by the law.

It is affirmed in the written reply that the regulation before the adoption of the impugned norm has not served as the basis for trust in law, as no binding final term ”for complete unconditioned liberalization of the rent” was determined. Restriction of the trust in law for the house-owners is justified by the above legitimate aim; therefore the Saeima holds that Section 1 of the Satversme has not been violated.

The Saeima rejects also the statement of the submitters about violation of Section 91 of the Satversme, as in fact in the State and local government buildings the rent level is much lower than the restrictions, determined in the impugned norm. Therefore the submitters –in comparison with the State and local governments – are not in a more unfavorable situation and the principle of equality has not been violated.

5.2. At the Court session **J.Narkēvičs** stressed that the impugned norm complied with Sections 1, 91 and 105 of the Satversme.

The Saeima representative rejected the arguments of the submitter that by adopting the impugned norm the principle of trust in law had been violated. Restrictions for the house-owners of the denationalized buildings would have remained even without the adoption of the impugned norm; therefore it cannot be affirmed that if the impugned norm had not been adopted, all the restrictions would lose validity. Owners of the denationalized buildings, when restoring their property rights received the buildings in such a condition in which they are, also with all burdens; thus they could not trust that the above burdens will disappear.

To his mind the legitimate aim of the impugned norm is to envisage a security mechanism for that group of tenants, who have not managed to unite in a voluntary civil relation, subject to the Civil Law. Thus the impugned norm restricts only the rights of those owners, who have not been able to reach an agreement.
J.Narkēvičs pointed out that Saeima, when acceding to November 4, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols No. 1, 2, 4, 7 and 11, took the decision that the requirements of Section 1 of the First Protocol would not refer to the property reform. Such a reservation to his

mind means that the claim to the Constitutional Court shall not be substantiated by the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention).

He holds that the impugned norm does not restrict all the rights of owners, it does not forbid the owner to use the property, belonging to him/her in a commercial manner. The norm interdicts the owners from determining higher rents for the let apartments. He stresses that one should not single out limitation of property rights and consider it as the absolute restriction of property rights.

The Saeima representative stressed that - as regarded violation of Section 91 of the Satversme - it was difficult to establish what were the groups of persons, who were discriminated.

He states that the impugned norm was not adopted suddenly and in haste; the procedure of its adoption has been in accordance with the requirements of normative acts. The impugned norm – to his mind – shall be assessed as a compromise between interests of different groups, and it has been determined by the State.

The Saeima representative recognized that till January 1, 2005 the State had not realized any activities so as to avoid adoption of the impugned norm. Only after passing of the impugned norm development of certain activities for the solution of the existing problem was commenced.

6. When preparing the case for review the Constitutional Court required information from the Cabinet of Ministers, the Ministry of Regional Development and Municipal Affairs, the Central Statistics Board. Besides the viewpoint of the State Human Rights Bureau and the Latvian University Professor Kalvis Torgāns was received.

6.1. **The Cabinet of Ministers** in its letter addressed to the Constitutional Court has enumerated the measures for the support of the tenants of the houses denationalized and returned to the lawful owners. In addition to the measures, marked in Item 4.2 of this matter, the Cabinet of Ministers mentions also the right of joining the local government register for receiving assistance; the right of acquiring information on the free local government apartments; advantages in participation regarding privatization of apartments, as well as offering for rent of the flats, which would otherwise be privatized. Before the adoption of the impugned amendments two working groups were formed, which met in meetings – for ensurance of the protection of the tenants' rights of the denationalized buildings

and for preparation of proposals for the amount of the rent. In its turn in 2003 the Ministry of Regional Development and Municipal Affairs made inquiries to local governments to ascertain the number of persons, who had apartment problems and the amount of resources needed for the solution of the problem; it also worked out the Amendments to the Law.

6.2. **The Ministry of Regional Development and Municipal Affairs** in its letter furnishes more detailed news about the activities of the Cabinet of Ministers and explains the history of elaboration of different normative acts. The Ministry also informs that it has received many letters of the residents in 2003 and 2004 in which " concern about the wish of the house-owners of the denationalized buildings to determine groundlessly high rent was expressed". It holds that it is necessary to maintain limitation of the amount of the rent " for a short period "; at the same time carrying out State supporting measures.

6.3. **The Central Statistics Board** informs the Constitutional Court that to the end of 2002 10,3 thousand houses, in which there are 78,0 thousand apartments, have been denationalized. The results of the choice investigation testify that in this period of time 39,9 thousand apartments denationalized or returned to the owners have been rented and in 72% of cases, tenants have lived there already before restoration of property rights. More detailed data are summarized in the bulletin "Private Apartment Houses", which was attached to the letter addressed to the Constitutional Court.

6.4. **The State Human Rights Bureau** points out that without the existence of the regulation for the transitional period, rise of the rent would be possible "only in case, when that is established in the rental agreement". However, experience makes one think that amendments of rental agreements "in case of abrogation of restrictions shall take place chaotically and groundlessly". In its turn the Property Bureau analyzes the rights in accordance with the case law of the European Human Rights Court and just as the Saeima concludes that criteria, formulated in it, allow regulation of the rent in private houses by law at least for a short period of time. Even though the State more and more participates in the solution of the problem, no noticeable progress has been reached for the time being. At the present moment, to the mind of the Bureau, the restriction ensures social justice and is proportionate. As concerns the compliance of the impugned norm with Sections 1 and 91 of the Satversme, the Bureau shares the viewpoint of the Saeima.

6.5. To the viewpoint of Professor **K.Torgāns,** even in case if the impugned norm had not been adopted, the owners of the apartments would not be able to freely determine the amount of the rent as Section 13 of the Tenancy Law establishes agreement between the tenant and the lessor as a general procedure as well as envisages settling of disputes by the court.

7. The invited persons: Staņislavs Šķesters – the Head of the Saeima State Administration and Local Government Committee, Ivars Gaters – the Chairman of the Riga Dome (the Riga City Council) Municipal and Apartment Affairs Committee and the Vice- president of the Latvian House-Owners' Association Dmitrijs Trofimovs were heard at the Court session. Instead of the invited person - the State secretary of the Ministry of Regional Development and Municipal Affairs Ilze Kukute, the Director of the Lodging Policy Department of the Ministry Ilze Oša was listened to.

7.1. **S.Šķesters** informed that there were not enough resources at the disposal of the State and the local governments for paying sufficient compensations to the tenants of houses denationalized and returned to the lawful owners; and that had been taken into consideration when elaborating the impugned amendments. After the amendments took effect the state and local government support programme for the tenants of houses denationalized and returned to the lawful owners. Before that there has not been a programme like this. The maximum rent determined by the impugned amendments is not differentiated depending on the location of the building, as the problem of rental agreements, concluded before the denationalization or return of the buildings, is urgent almost only in Riga and Jūrmala.

7.2. **I.Oša** explains why the Ministry had worked out the impugned amendments. It has been established that, first of all, local governments do not have enough free apartments; secondly, only in Riga and Jūrmala lessors are trying to receive from the tenants the rent, which surpasses the maximum amount, regulated in the Tenancy Law Transitional Provisions; thirdly, in the buildings, which have been sold after denationalization or return, the obtainers use to require high rent, which is not conformable with the market circumstances. The impugned regulation determines equal restrictions to all lessors because the maintenance expenses do not depend on the place of the building or other certain factors. The maximum rent has been calculated in accordance with the data of the State Real Estate Agency about the maintenance of the Riga Centre buildings, even including the depreciation expenses. Besides, its gradual increase exceeds the inflation.

7.3. **I.Gaters** informs that building of apartment houses is going on in Riga for which the Local Government has taken a loan of 30 million lats. At the present moment the market provides only for building of ”apartments of high class”, therefore the local government has to build ”economical apartments”.

7.4. **D.Trofimovs** asserts that the residential rent is the only service, which according to the law is offered ”under prime cost”. Therefore no considerable development has taken place in the residential rental market. He also expressed doubt about the maintenance costs, calculated by the Riga Dome and the State Real Estate Agency as not all necessary payments, like, insurance, had been included in them.

The concluding part

8. Denationalization and return of buildings to the lawful owners after the renewal of national independence of Latvia was realized under the property reform. By the laws, regulating the reform were also determined the legal relations between the owners of the houses and persons, who used apartments in the denationalized or returned to the lawful owners buildings before restoration of the property rights (henceforth – pre-reform tenants).

When analyzing issues, which are connected with one component of the property reform – the land reform - the Constitutional Court has concluded: ”The State of Latvia is not responsible for violation of human rights, including nationalization of property, which was realized by the occupational government. The Republic of Latvia has no possibility and no duty to completely compensate all the losses, inflicted on persons by the occupational government” (*The Constitutional Court March 25, 2003 Judgment in case No. 2002-12-01; Item 1 of the concluding part).*

Simultaneously the Constitutional Court has stressed: ” When renewing the legal system of independent Latvia, the legislator had the duty of undertaking measures to renew fairness and redress the losses inflicted by the previous regime by observing the principles of a law-based state. At the same time the legislator, when choosing the means for the land reform, had to reach a fair balance between the contradictious interests of various members of the society” (*the same source).*

Also when realizing other components of the property reform, inter alia when denationalizing and returning buildings to the lawful owners, the legislator has to observe the principles of a law-governed state.

When making a report in the name of the working group at the Republic of Latvia Supreme Council on draft laws, which envisaged denationalization of buildings the above was stressed also by the deputy Andris Grūtups: ” Fairness shall be the basis of draft laws. What has once been illegally expropriated shall be returned […] at the basis of the draft laws – as an extremely significant principle - we set social concordance, so that the legal norms of the above draft laws would not violate reasonable interests of tenants and lessors” [*Latvijas Republikas Augstākās Padomes 1991. gada 6. jūnija sēdes stenogramma; Verbatim Report of the Republic of Latvia Supreme Council June 6, 1991 session.// Latvijas Vēstnesis No. 175 (3333), 03.11.2005]*

The reporter stressed : ”If it is my property, then you by any administrative decision may not turn against me as the owner in determining the rental payment […] however we shall distinguish a normal civil situation from the reform. As concerns the reform we still have to reckon with such realities of property or tenure, which have been formed. At least as long as we are implementing the reform. (*The same source).*

In the October 30, 1991 wording the laws ” On the Return of Buildings to Their Legal Owners” and ” On the Denationalization of Buildings in the Republic of Latvia” establish that ”the owners must honour all leases and rental agreements, previously made by the present building manager”.

Thus, in the conditions of property reform, when adopting the above laws, one of the aims of the legislator was to balance the interests of the lawful owners of the buildings and those of the pre-reform tenants.

9. There is no dispute in the matter on the fact whether at the starting period of the reform and at the time till the adoption of the impugned norm determination of the maximum rental payment to the pre-reform tenants complies with the legal norms and principles of higher legal force. The submitters of the claim contest only amendments to the Law ” On Residential Tenancy”, which have been adopted on December 20, 2004. Thus – more than 10 years after the time, when the term for submission of applications for restoration of buildings ended for the owners of the buildings; and one and a half legislature period of the Saeima after Chapter 8 of the Satversme ” Fundamental Human Rights” was passed and had taken effect.

On June 4 1997 the Saeima adopted the Law ”On November 4, 1950 European Convention for the Protection of Human Rights and

Fundamental Freedoms and its Protocols 1, 2, 4, 7 and 11". Section 2 of it includes the following remark:

"Requirements of the First Protocol, Section 1 of the Convention shall not refer to the property reform, which regulates return of the nationalized, confiscated, collectivized or otherwise illegally expropriated properties during the period of the USSR annexation or payment of compensation to the former owners or their heirs, as well as to privatization of agricultural companies, fishermen collective farms and State and local government property."

From the statement of the Saeima representative at the Court session it follows that, taking into consideration the above remark, reference of the submitters of the claim to the Convention and Satversme Section 105, is unsubstantiated. He stated that the property reform was still going on, as the courts continued to review cases, "which follow from renewing of independence" (*skat: lietas materiālu 4.sējuma 4. lpp; see Vol.4, p. 4 of the materials of the matter).* In their turn the submitters stressed that in 1998, when adopting Chapter 8 of the Satversme "Human Rights and Fundamental Freedoms", the legislator has not made any remarks.

The viewpoint of the Saeima representative is ungrounded. Even though the property reform is still continuing in separate sectors, for example, concerning privatization of State and local government property, the term of utilization of vouchers etc., however it **could not influence the duty of the legislator to observe Section 105 of the Satversme, when adopting the impugned norm.**

10. Section 105 of the Satversme determines: "Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law". In its turn, in conformity with Section 89 of the Satversme "the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia". As has been repeatedly stated in the Constitutional Court Judgments, it can be seen from the above Section that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international norms of human rights (*see the Constitutional Court June 27, 2003 Judgment in case No. 2003-04-01, Item 1 of the concluding part and January 17, 2005 Judgment in case No. 2004-10-01, Item 7, Sub-item 1).*When interpreting the fundamental rights determined in Section 105 of the Satversme, one shall simultaneously take into consideration also the norms incorporated in international human rights instruments and the practice of their application.

Section 1 of the First Protocol of the Convention includes three separate norms: first of all the first sentence of the Section envisages the right to the peaceful enjoyment of his possessions; secondly, the second sentence of the Section determines prohibition of arbitrary deprivation of the possessions and the provisions for deprivation of property, and, thirdly, it is recognized in the second Paragraph of the Section that the State has the right of controlling the use of the property in accordance with the general interest. These three separate norms are mutually closely connected. Section 105 of the Satversme has similar contents. It determines both – unhindered implementation of the property rights, and the rights of the State to restrict use of the property in accordance with public interests. The property right incorporates also the right of gaining all the potential benefit from his/her income, i.e., income and interest (*see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03).*

Also in conformity with the explanation by the European Court of Human Rights Section 1 of the First Protocol of the Convention includes the right to use the property, as utilization ”creates a traditional and fundamental aspect of property rights” (*Marckx v. Belgium [1979] ECHR 2, para.63).*

Thus the right to the property includes also the right of gaining benefit from one’s possessions, inter alia, also by renting them, which not only ensures the maintenance of the respective property but also brings profit to the owner.

If the owner is not able to freely use his possession, inter alia by renting it and gaining the potential benefit from it, then his/her rights to the property are restricted.

11. In their claim the submitters contest Section 13 of the ”Amendments to the Law ”On Residential Tenancy” adopted on December 30, 2004, which include five different amendments to the Transitional Provisions of the Tenancy Law.

11.1. In the former wording Paragraph 4 of the Transitional Provisions envisaged that after January 1, 2005 the rental payment for an apartment shall be determined by a written agreement of the tenant and the lessor, including therein a portion of the residential house management expenses, which is proportional to the area of the relevant rented-out residential space, and the profit; but, if no agreement has been reached the amount of it shall be determined by the lessor. In their turn the Amendments, which in Paragraph 4 of the Transitional Provisions of the Tenancy Law have been made by the impugned norm not only envisage the maximum rental payment in

2005, 2006 and 2007 but also determine that in cases, when rental payment is not determined by a written agreement of the parties, the lessor shall determine it (by including therein a portion of the residential house management expenses, which is proportional to the area of the relevant rented-out residential space, and the profit).

11.2. The second Paragraph of Section 13 of the Tenancy Law establishes: "If an option to increase rental payment for the residential space during the operation of a residential tenancy agreement is provided for in such agreement, the lessor shall notify the tenant in writing regarding such increase at least six months in advance, unless the rental agreement states otherwise. The reason and the financial justification of the rental payment increase shall be specified in the notification." In the former wording Paragraph 8 of the Transitional Provisions of the Tenancy Law envisaged: "If a residential tenancy agreement (except the agreement referred to in Paragraphs 2, 3, 4, 5, and 6 of these Transitional Provisions) has been entered into during the time period up to December 31, 2001 the rental payment, mentioned in it may be increased during the operation of the agreement, in compliance with provisions of Section 13, Paragraph two of the Law." The impugned norm in its turn deleted reference to Paragraphs 4-6 and supplemented the Paragraph with the text, which envisages: "If the apartment is located in a house denationalized or returned to a lawful owner and the tenant has been using the apartment up to the restoration of the property rights, after 31. December 2007, the rental payment may be increased during the operation of the agreement, in compliance with the provisions of Section 13, Paragraph 2 of the Law.

In his written viewpoint, submitted to the Constitutional Court K.Torgāns points out that Section 13 of the Tenancy Law envisages written agreement between the tenant and the lessor and settlement of disputes at the court as a general procedure. If the term of the restriction had not been postponed – from December 31, 2004 to 2007 – the number of disputes to be reviewed at the courts would have increased and the result of the review would depend on the assessment of the reasons and financial justification of the rental payment increase (*sk. lietas 1.sējuma 87.lpp;// see Vol.I, p.87 of the materials of the matter).*

11.3. At the Court session the submitters expressed the viewpoint, that in case if the legislator had not adopted the impugned norm, they would have been able to determine a reasonable rental payment, however, if no agreement with the tenant on the amount of the rental payment were reached, the dispute would be reviewed at the court.

11.4. The submitters of the claim state that the maximum rental payment determined by the legislator is first of all insufficient for covering real maintenance expenses of the residential house. By calculating the above expenses in accordance with the Cabinet of Ministers January 29, 2002 Regulations No. 45 ”Methods for Calculating Management Expenses Included in the Rental Payment for Residential Space” the monthly rental payment for a square metre in their houses shall be 2,00 lats, 1,75 lats and 1,36 lats.

It is not the duty of the Constitutional Court to verify whether the concrete expenses regarding the concrete buildings are correct and reasonable. Such verification is possible by reviewing the case at the court of general jurisdiction.

Simultaneously the Constitutional Court takes into consideration that one shall not compare medium expenses at the State and local government houses with the expenses, which are necessary for maintenance of every respective house denationalized or returned to the lawful owners. Because of inadequately low rental payment, determined in an administrative way during the Soviet times and following from it inability of the State to maintain them in order, a great number of residential houses were returned to the former owners or their heirs in a really bad technical condition. During the discussion of the Laws ” On the Denationalization of Buildings in the Republic of Latvia” and ” On the Return of Buildings to Their Legal Owners” at the session of the Supreme Council it was stressed that ”all the expropriated buildings with minute exceptions are in an extremely bad technical condition and many of them need emergency work” [*Latvijas Republikas Augstākās Padomes 1991.gada 6.jūnija sēdes stenogramma; Verbatim Report of the Republic of Latvia Supreme Council June 6, 1991 session.// Latvijas Vēstnesis, No. 175 (3333), 03.11.2005].* Deputy Chairman of the Riga Vidzeme District Local Government J. Legzdiņš remarked: ”The problem of the house-holders is much more essential . At the present moment to receive an uncared for building, full of tenants, who are used to require normal living conditions for a symbolic rental payment, which in itself is nothing illogical, is a big burden both – materially and morally. […] if at the present moment 7,7, million roubles are necessary for the subsidies needed by the housing departments and we are able to divide only 3,3 million among them then you are able to imagine what a burden a house-holder shall undertake. Besides, one must take into consideration the fact that expenses of capital repairs are not included in the above sum” (*the same source).*

11.5. As can be seen from the documents, submitted by the Saeima, about the discussion on the impugned norm, concrete maximum rental payments were mainly discussed by taking into consideration the amount of the rental payment, which the pre-reform tenants are able to pay. The Saeima has not submitted to the Constitutional Court any materials, which confirm that during the discussion about the impugned norm the legislator has ascertained whether the amount of the rental payment to be determined is sufficient for covering real management expenses of residential houses. At the Court session the representative of the Saeima could not answer to the question about the economical justification of the maximum concrete rental payment and what expenses, needed for the maintenance of the house, have been taken into consideration by calculating it. For example, during the second reading of the Amendments at the Saeima session the proposal by the Ministry of Regional Development and Local Government Affairs , which envisaged a greater amount of the maximum rental payment, namely, in 2005 – 0,70; 2006 – 0,82 but to July 1, 2007 – 1 lats per square metre was not supported (*sk. lietas materiālu 2.sējuma 57.lpp; see Vol.II, p.57 of the materials of the matter).*

Besides, the maximum rental payment has been equally determined, regardless of the geographical location of the house, its size and other qualities, which can influence the maintenance expenses to a great extent. The legislator has not envisaged either substantial, financed by the State, mechanisms of compensation or the possibility for the house-owners, who might in a certain procedure substantiate that reasonable maintenance expenses of the houses exceed the income from the rental payments, to demand greater rental payment.

Even without verification of the reasonability and correctness of the concrete calculation one may conclude that the impugned norm prohibits part of the house-owners to demand from the pre-reform tenants rental payments, which cover reasonable maintenance expenses and are substantiated by calculations, the rightness and validity of which the owner is able to prove in the court. **This means that these owners have to cover the expenses from other resources.** Simultaneously the impugned norm **forbids the owner to gain a reasonable profit from renting of apartments.**

Thus the impugned norm by which Amendments have been made **to Paragraphs 4 and 8 of the Tenancy Law Transitional Provisions restrict the rights of the house-owners of houses denationalized and returned to the lawful owners, which are envisaged for them in Section 105 of the Satversme.**

12. The Constitutional Court has repeatedly stressed that the right to property is not absolute. First of all the property shall serve public interests. Secondly, the right to a property may be restricted if the restrictions are determined by law, have a legitimate aim and are proportionate (*see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03).*

12.1. Both in the Convention and in the Constitutions of other States the right to property is connected with the State control over the utilization of the property and duties, which the property imposes.

Thus, for example, Section 32 (the second Part) of the Republic of Estonia Constitution envisages: ”Everyone experiences the right of peaceful enjoyment of his/her property, to use and manage it. Restrictions are determined by law. Property shall not be used contrary to public interests.” Section 11 (the Third Part) of the Czech Republic Charter of Fundamental Rights and Fundamental Freedoms establishes: ”The rights to property are binding. They shall not be used to harm the rights of other persons or contrary to legally protected public interests. Their use shall not be harmful to the health of persons, the nature and the environment. ” In its turn Section 14 (the First and the Second Part) of the German Federative Republic Fundamental Law determines: ”(1) The right to the property and the right to inherit is not guaranteed. The law shall determine the contents and limits of the right. (2) The property imposes duties. Its utilization shall serve also the public interests.”

The German Federative Constitutional Court when reviewing issues connected with the restrictions of rental payments has concluded that in the sense of Section 14 (the second sentence of the First Part) the legislator - even in the sector of civil rights, in a concrete case when determining binding instructions regarding rental rights, shall have the duty of taking into consideration both – recognition of the constitutional property right and the requirement to utilize the property in a socially fair way (*see BVerfGE 37, 132, 140).*

Section 1 (the second Part) of the First Protocol of the Convention also envisages the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

The European Court of Human Rights has concluded that ” the state has the right of enforcing the laws, it deems necessary to control the use of property in accordance with the general interest. Such laws are especially needed therefore they are widely used in the sector of lodging, which in our contemporary society is a significant element

of the social and economic policy. To implement such policy the legislator needs extensive freedom of assessment both regarding determination of controlling mechanisms, which are of public interest, and a detailed elaboration of regulations for realization of the above activities" (*Scollo v. Italy [1995]ECHR 34, para. 28; see also for example: Mellacher et al v. Austria [1989] ECHR 25, para.45).*

In the legal rental relations " there is a special status of the house-owner, which has been created in publicly-legal interests by establishing specific boundaries of the property" (*Sinaiskis V. Saimniecības tiesību lietiskās normas; Sinaiskis V. Norms of Affairs of Household Rights.// Tieslietu Ministrijas Vēstnesis, 1935, No.4, p.699).* Besides, existence of such boundaries is well-known also in other places of Europe (*see for example: Wilhelmsson T. Varieties of Welfarism in European Contract Law. European Law Journal, Vol. 10, No. 6, 2004, p. 722)* as well as in Latvia already many years ago (*sk. piemēram Dzelzīts K.Jauno dzīvokļu īres tiesību principi; see for example Dzelzīts K. The Principles of the New Residential Tenancy Rights.// Tieslietu Ministrijas Vēstnesis, 1925, No. 7 – 9, pp. 849 – 874; Valters K. Dzīvokļu īres maksas noformēšana. Valters K. Drawing up of Rental Payment.// Tieslietu Ministrijas Vēstnesis, 1920, No.1, pp. 24-29).* Entrepreneurial activity in the sector of residential tenancy of course has the usual financial risks; however the owner shall realize that several more or less determined by the law restrictions of the property rights exist.

12.2. The submitters of the claim neither in their claim nor at the Court session deny the fact that the property rights may be restricted, however they hold that when assessing these restrictions in accordance with the criteria established by the Constitutional Court case law it shall be recognized that they are not proportionate to the legitimate aim, which the legislator has tried to reach by determining the restrictions.

From the written reply of the Saeima it also follows that regarding the submitters of the claim the impugned norm includes restriction to the rights, determined in Section 105 of the Satversme; and this restriction shall be assessed in compliance with the criteria established by the Constitutional Court case law. However, it is stressed in the written reply that this restriction is not only determined by a legitimate aim but is also proportionate to it.

12.3. In his turn, at the Court session when answering to the question of the Constitutional Court about the main preconditions for restricting fundamental rights of a person, the Saeima representative expressed

the viewpoint that in this case it ”would be the criterion that the respective persons, whose fundamental rights are restricted, represent a certain social section, social group. And the question arises, whether when unequivocally meeting the - if we may say so – fair and reasonable to their mind requirements of this social section, social group, category, aim object, alongside with it are not influenced, violated and still more violated the fundamental requirements of other social groups, respective sections.

Such viewpoint of the Saeima representative is not substantiated by the case law of either the Constitutional Court or other Constitutional Courts as well as the conclusions of the Judgments of the European Court of Human Rights or scientific literature. Balancing of the interests of social groups and sections is the political duty of the legislator.

12.4. To assess whether the impugned norm complies with Section 105 of the Satversme, the Constitutional Court shall assess whether the restriction of the fundamental rights complies with the following requirements:

a) whether it has been determined by law;
b) whether it has been determined by a legitimate aim;
c) whether it complies with the principle of proportionality.

13. The impugned norm has been determined by law, which was adopted and promulgated under the certain procedure. Thus there is no doubt that the restriction of the fundamental rights has been determined by law.

14. When determining restrictions to fundamental rights of a person, the duty of presenting and substantiating the legitimate aim of such a restriction first of all lies on the institution, which has passed the impugned act; in this respective case – on the Saeima.

During the debate at the Constitutional Court the Saeima representative expressed his opinion on the legitimate aim like this: ”Thus there is the issue about the legitimate aim – whether it refers to everybody or it refers to those tenants to whom financial position denies. Thus the law envisages a security mechanism to that part, which has not been able to come to an agreement in a voluntary, submitted to Civil Law, civil relation.”

After the submitters of the claim replied that in the above case there was no legitimate aim, the Saeima representative repeated a similar viewpoint: ”I hold that there is the legitimate aim and violated is only that part, on which they have not been able to agree in a civil agreement,

which the impugned norm envisages for them. And the statistics shows that such cases happen in a significant number, as the norm is being observed and the norm works."

Such **statements by the Saeima representative shall not be assessed as the substantiation of the legitimate aim, in accordance with which the fundamental rights, fixed in the Satversme, may be restricted.**

15. The Saeima in its written reply points out that restrictions to the rental payments have a legitimate aim – " to ensure the social protection of the poor tenants in the conditions when there is a permanent shortage of dwelling space and there exists concern about the possibility of groundless determination of high rental payment […] this legitimate aim shall be interpreted in a more extensive context, as the housing problem creates violations of other human rights, for example, the right to social security and also in the sector of the rights of the child" (*lietas materiālu 1.sējuma 52.lpp; Vol.I, p. 52 of the materials in the matter).*

It follows from the written reply that the legitimate aim of the restriction has three aspects: first of all ensurance of the social protection of poor tenants, secondly, permanent shortage of dwelling space and, thirdly, concern about determination of unreasonably high rental payment.

15.1. Similar aims have been recognized as legitimate in the case law of the European Court of Human Rights: " to make dwelling space accessible for the less well-off society members in an easier way and for reasonable prices", especially if the offer of living space is not sufficient (*Mellaher et all v. Austria, para.47; see also for example Immobiliare Saffi v. Italy [1999] ECHR 65, para. 48; Hutten-Czapska v. Poland, para.160),* as well as "the social protection of tenants, which thus tends to favor the economic welfare of the state and protection of the rights of other persons" *(Velosa Barreto v. Portugal [1995]ECHR 49, para. 25).*

The submitters of the claim do not deny that the aim to socially protect the fundamental rights of the needy tenants shall be regarded as legitimate. It is pointed out in the constitutional claim that the submitters of the claim " do not question the necessity of helping the tenants, who live in the denationalized houses or the buildings returned to the lawful owners" *(lietas materiālu 1. sējuma 9.lpp; Vol.I, p.9 of the materials of the matter).* The representative of the submitters L. Liepa at the Court session stressed :" We do see the legitimate aim, which substantiates this law […] first of all it is the social aim, i.e., to secure rights of certain people, which are connected with […] acquis of the subsistence wage ,which […] the

State of Latvia in its Satversme has promised to these individuals (*lietas materiālu 4. sējuma 126.- 127.lpp; Vol.IV, pp. 126-127 of the materials in the matter).*

15.2. At the Court session I. Gaters acknowledged that the market does not ensure construction of cheap dwellings: ”It is hard to motivate the contractors […] to build economical apartments […] because the construction expenses for building a potentially economical house or a house with conveniences do not differ as materially as the selling expenses. At this moment, while the demand for apartment market is really great, […] it is difficult to expect that the construction of these private houses, big residential houses will be able in some way to solve this issue”(*lietas materiālu 4. sējuma 106.-107. lpp.; Vol. IV, pp. 106-107 of the materials in the matter).*

When assessing the legitimate aim of the impugned norm shortage of cheap dwelling space in the market is a noteworthy and acknowledgeable factor. Problematic is ensurance of dwelling space for tenants with meager means, to whom acquisition of expensive apartments is impossible. Therefore the aim of the restriction of the property rights shall not be connected with the general shortage of the dwelling space but with insufficiency of accessibility to cheap flats.

15.3. The State Human Rights Bureau informed the Constitutional Court about the cases, when during the period before the adoption of the impugned norms the lessors had planned to determine the rental payment in the amount from five to twenty lats for a square metre (*lietas materiālu 2.sējuma 142.lpp; Vol.II p. 142 of the materials in the matter).* Some notifications, forwarded to the tenants by the lessors before the adoption of the impugned norm, which were attached to the letter by the Ministry of Regional Development and Municipal Affairs (*sk., piemēram lietas materiālu 2. sējuma 96., 97., 108. lpp.; see e.g. Vol.II, pp. 96, 97, 108 of the materials in the matter)* testify about the intention to determine an unusually high rental payment. Simultaneously I. Oša at the Court session conceded that very often the price of the rent market does not reach even the allowed by the Transitional Provisions of the Tenancy Law maximum *(sk. lietas materiālu 4. sējuma 83. lpp.; see Vol.IV, p.83 of the materials in the matter).* The Ministry of Regional Development and Municipal Affairs has also affirmed the above in its letter addressed to the Constitutional Court *(sk. lietas materiālu 2. sējuma 40.lpp.; see Vol. II, p.40 of the materials in the matter).* In its turn concrete cases, when the payment required by the administrators of private houses was more than two times lower than the maximum determined in the impugned norm, have been mentioned in the

Saeima written reply (*sk. lietas materiālu 1. sējuma 56.-57.lpp.; see Vol. I, pp. 56 -57 of the materials in the matter).* In the bulletin ”Private Residential Houses” prepared by the Central Statistics Board in which September of 2004 data are summarized it is stressed that at that time only in Riga the average rental payment in the denationalized houses and returned to the lawful owners buildings somewhat exceeded the restrictions, included in the Transitional Provisions. In the territories around Riga and other places of Latvia the market had determined lower payment. In its turn in Riga houses denationalized and returned to the lawful owners average rental payment only for one fourth part exceeded 48 centimes for a square metre, mentioned in the Transitional Provisions (*sk. lietas materiālu 1.sējuma 108.lpp.; see Vol.I, p. 108 of the materials in the matter).* At the present moment the impugned norm determines 72 centimes as the maximum rental payment for a square metre, besides, in 2007 it will increase to 84 centimes. As can be seen, on the one hand proposals to determine especially high rental payment have been expressed, but on the other hand – market price frequently is considerably lower.

As for finding a new apartment and moving of belongings a considerable time is needed, one may admit that in unregulated market the balance shall not set in rapidly and inadequate for the real situation offers of the lessors might be often heard.

As has been concluded before, the court of general jurisdiction may assess the substantiation of each offered increase of rental payment. However ungrounded is the Saeima viewpoint that the impugned norm is necessary to avert mass turning out of tenants from the flats. Even if the impugned norm had not been adopted, the respective norms of Section 13 of the Tenancy Law and those of the Laws ” On the Denationalization of Buildings in the Republic of Latvia” and ”On the Return of Buildings to Their Legal Owners” as well as the Cabinet of Ministers January 29, 2002 Regulations No. 45 ”Methods for the Calculation of the Management Expenses Included in the Rental Payment for the Residential Space” would be binding on the lessor. Even though there are attempts to determine groundlessly high rental payments, there is no basis for concern about success of the attempts, as the lessor alone, not reaching an agreement with the tenant, is not able to determine the amount of the rent. Thus this aspect of the aim of the impugned norm, advanced by the Saeima may not be justified.

Thus, it follows from the written reply of the Saeima that the legitimate aim of the impugned norm is only the protection of the

poor and needy pre-reform tenants in the conditions when there exists shortage of cheap flats.

15.4. In accordance with the data summarized in the Central Statistics Board Bulletin ”The Private Residential Houses” in September of 2004 more than half of the households living in the houses denationalized and returned to the legal owners had money difficulties in covering rental payments or even had debts (*sk. lietas materiālu 1.sējuma 109.lpp.*; *see Vol.I, p. 109 of the materials in the matter).* In its turn the Ministry of Regional Development and Municipal Affairs before adopting the impugned norm has concluded that about 62 percent of households will not be able to pay rent if the monthly rental payment for a square metre reaches 1 lats, but 80 percent of households will not be able to pay 2 lats per square metre (*sk. lietas materiālu 2. sējuma 37. -38.lpp.; see Vol. II, pp. 37-38 of the materials in the matter).* It testifies that at least for a part of tenants payments for the shelter creates a great part of total expenses and substantially influences consumption of other economic goods. As the expenses for the dwelling space rent as regards income are comparatively inflexible then one may conclude that the demand in the above market is comparatively inflexible against the fluctuations of prices. Thus increase of the rental payment comparatively significantly would lessen the usefulness of the total household consumption (*sk. Škapars R. Mikroekonomika.; see: Škapars R. Microeconomics.// Latvijas Universitāte, 2004, 132 – 136.lpp.)*

The restriction to require and receive a higher rental payment diminishes the household expenses and thus protects the poor and needy pre-reform tenants in circumstances when there is a shortage of cheap dwelling space.
Thus the impugned norm on the whole is appropriate for reaching the legitimate aim.

15.5 However, the impugned restrictions do not connect the maximum amount of rental payment with the financial position of the tenants. The impugned norm establishes the possibility to pay a limited rental payment both for poor and needy persons and persons, whose financial position is possibly better than that of the owner of the house denationalized or returned.

In accordance with the information furnished by I.Gaters about 25 thousand persons, whom the impugned norm concerns, live in the houses denationalized and returned to the legal owners in Riga. In compliance with the criteria determined by the local governments approximately 11,5 thousand persons had registered to receive assistance (*sk. lietas materiālu 4. sējuma 105.lpp.; see Vol. IV, p. 105 of the materials in the matter).*

At the Court session I.Oša stated: ”never has there been affirmation of the fact that all 25 thousand tenants had problems with the owners. […] We know of very many cases when the old tenants have concluded agreements with the owners anew, have agreed on a different payment, different terms. They are in the category of old tenants, but they have no problems in, first of all, getting on with the present owner of the house and, secondly, still paying the payment, which the owner and the tenant have agreed on. We envisage that the number of persons, to whom in the nearest time assistance shall be indispensably paid, is much smaller, about 7 – 8 thousand” (*lietas materiālu 4. sējuma 89.lpp.; Vol.IV, p. 89 of the materials in the matter).*

In its turn from the information, which has been furnished by Dzintra Āboliņa – the coordinator of Riga Information and Public Relations Projects – to Agency LETA, follows that till the beginning of August 11089 Rigan families have registered at the Riga Local Government to receive assistance in the sector of dwelling space. Among them also the inhabitants of the denationalized houses, whose income does not exceed 200 lats on a person in a one person family or 150 lats on a person in the family consisting of several persons. In August of 2005 there have been 1756 such families, i.e., one sixth of the persons, who have been registered for receiving assistance (*skat. Pašvaldības palīdzības saņemšanai mājokļu jautājumos reģistrējušās 11 089 rīdzinieku ģimenes; see 11 089 Rigan families have registered for receiving local government aid in the sector of dwelling space;//Leta, 10.08.2005., www.leta.lv).*

Thus well-grounded is the viewpoint expressed by the representatives of the submitters of the claim at the Court session that **it is not possible to justify determination of restriction of rental payment to all pre-reform tenants with the above aim.**

15.6. Besides the legitimate aim, especially when interpreting it in a more extensive context with social rights and especially the protection of the rights of a child, is only partly reached with the impugned norm. Namely, it protects from determination of high rental payment only those poor and needy tenants, who are pre-reform tenants. This protection does not refer to other poor and needy tenants, for example, young families with children, who have created an independent household after the renewal of independence of Latvia.

To cover the expenses on the maintenance of the house and gain even minimum profit, the finances, which the law prohibits to the owner to receive from rental payments of the pre-reform tenants, most of all are gained by determining a higher rental payment to other tenants. Thus, for example, in accordance with the Central Statistics Board data 40% of tenants pay rent, which exceeds 0,60 lats per one square metre of the total space and on the whole regarding the ”non-denationalized apartments” it is for 10% higher than regarding the ”denationalized apartments” (*see: http://www.csb.lv).* Thus, just

the poor and needy families with children may find it difficult to start renting an appropriate apartment.

15.7. The impugned norm does not reach its aim also regarding those poor and needy persons, whose family membership has decreased during the last 10 years. These persons are protected as long as they live in the former, sometimes even disproportionately spacious apartment.

Thus the impugned norm regarding poor and needy pre-reform tenants has a legitimate aim; however, it is only partly reached.

15.8. To establish whether the impugned norm in the part in which it has a legitimate aim complies with proportionality, namely, whether the public benefit is greater than the restriction determined to the fundamental rights of the individual, it shall first of all be assessed whether there are no other measures for reaching the above aim, which violate the rights of the submitters of the claim in a lesser degree.

As the submitters of the claim pointed out the legislators had the possibility of determining a regulation, which would be more considerate to the house-owners, at least by partly compensating expenses, which are connected with not gained rental payments, for example, by envisaging real estate tax rebate for that part of the house, where pre-reform tenants reside, other tax rebates or other compensations.

Thus the legislator had the possibility to determine a solution, which would not so substantially violate the fundamental rights of the submitters of the claim.

As the European Court of Human Rights has recognized, potential existence of alternative solutions alone does not make the norm to be assessed ungrounded. If the legislator has not violated the boundaries of his freedom of action, the European Court of Human Rights shall not assess whether the chosen solution has been the best or he should have chosen other measures (*see: Mellaher et al v. Austria, para. 53).* The Constitutional Court shall not assess what alternative solutions would or would not have been appropriate for the solution of the situation either. However from the debate on the impugned norm at the Saeima session it can be seen that the legislator has not assessed any alternative solutions, which would balance the interests of the tenants and the owners; the legislator has taken care just about the protection of one party - pre-reform tenants.

The Constitutional Tribunal of Poland in its Judgment on the determination of the maximum rental payment observes that the legislator has only changed the situation, regarding rent, but has not changed any other aspects of the legal status of landlords, so as to compensate losses, connected with it. As concerns the above circumstances the Constitutional Tribunal of Poland has concluded

that the impugned norms include disproportional restrictions of the fundamental rights, fixed In Section 31 (the third Part) of the Constitution (*sk. Polijas Konstitucionālā tribunāla 2002. gada 2. oktobra spriedumu lietā No. K48/01; see the Constitutional Tribunal of Poland October 2, 2002 Judgment in case No. K48/01).*

The Federal Constitutional Court of Germany, when solving issues on the restrictions of rental payments, has pointed out that, when determining binding directions on tenancy rights, the legislator shall – in these directions – take into consideration both the interests of the tenant and also those of the lessor. It does not mean that these interests are always and in each context equally significant. However one-sided advantages or damages cannot be connected with the constitutionally legal representations about ”socially binding private property” (*see:BVerfGE 37, 132, 141).*

Besides the European Court of Human Rights has stated that the State ”freedom of activities, even if it is significant, is not unlimited and its use even in the context of the most complicated reforms shall not create consequences, which are at variance with the standards of the Convention” (*Broniowski v. Poland [2004] ECHR 274, para 182; Hutten- Czapska v. Poland, para. 185).*

Not doubting the duty of the State to take care of welfare of the its residents, the Constitutional Court may not agree that it can be implemented only in one way, namely, with the help of onerous regulation of tenancy rights. Even though a short-termed interference in legal rental relations may be justified, in a long period of time the state shall undertake the responsibility for the risk of social shock.

Similar conclusions on the regulation of rental payment, which has once been determined in connection with the transition from planned economy to market economy, were made by the Constitutional Tribunal of Poland. It has pointed out that, first of all, the legislator has acted especially irresponsibly, by extending in the last days of 2004 the term of the Transitional Period Regulation, which had to be terminated on December 31. Secondly, the State has to ensure a fair balance between the interests of the tenants and the lessors; however, laying the financial hardships only on the shoulders of the lessors cannot be regarded as fair. If the State considers that the social aid is necessary, it – in accordance with a correct understanding of the principle of social solidarity – shall be granted from the whole society, i.e., State finances (*sk. 2005. gada 19. aprīļa spriedumu lietā No. K 4/05; see April 19, 2005 Judgment in case No. K 4/05;// www.trybunal.gov.pl).* In its turn the Constitutional Court of the Czech Republic has recognized that ” transferring” State social obligations to house-owners, paying attention only to the financial interests of tenants is inadmissible (*sk. 2004. gada 23. septembra spriedumu lietā No. IV. US 524/03; see Septemebr 23, 2004 Judgment in case No. IV. US 524/03;// codices.coe.int).*

Thus, the restrictions, determined to the rights of house-owners are not proportionate to the public benefit, gained from the restrictions.

Thus, the restrictions, determined regarding the amount of the rental payment of pre-reform tenants, which are not poor or needy persons, cannot be justified by the legitimate aim stated in the Saeima written reply. In its turn, as regards the amount of rental payment of pre-reform tenants, who are poor or needy persons, they can be justified by the above aim, however, are not conformable with the principle of proportionality.

16. Even though neither the Saeima representative at the Court session nor the Saeima in its written reply have mentioned other legitimate aims, the Constitutional Court, taking into consideration the principles of the Constitutional Court process on its own initiative has to establish whether some other legitimate aims cannot be found to the impugned norms.

The representative of the submitters of the claim L.Liepa at the Court session pointed out: ”We do see a legitimate aim, which substantiates this Law […] In fact there are two of them.[…] The second one is the economical aim. […] Even here it was debated about the so-called development of the residential house property market, which definitely is also one of the aims, why the norms are such, as the legislator has formulated” (*sk. lietas materiālu 4. sējuma 126. -127. lpp.; see Vol.IV, pp. 126-127 of the materials in the matter).*

Also June 16, 1924 Law ”On the Rent of Apartments”, at that time envisaged restrictions to the rental payment. Thus, Section 37 of it determined boundaries, which the rental payment for the space of a certain category shall not exceed, if compared with rental payment, which existed till August 1, 1914. In its turn, Section 38 envisaged that in cases when ”the house has been improved with facilities and conveniences, which were not there before the war, the rental payment may be increased to a certain, greater amount” (*Likumu un Ministru kabineta noteikumu krājums, 1924, dok. No.91; Collection of Laws and the Cabinet of Ministers Regulations, 1924, doc. No. 91).*

The State Human Rights Bureau, when expressing its viewpoint about the matter to the Constitutional Court, notes that the European Court of Human Rights in the case ” Mellacher et al v. Austria” has recognized that determination of the rent ceiling in the state depending on the type of the dwelling space is proportionate to the aim to be reached.

In the concrete case the European Court of Human Rights acknowledged such aims: to lessen the excessive and ungrounded differences of equivalent apartments and to struggle against speculations

with properties; to make apartments for reasonable prices accessible to less prosperous residents, at the same time stimulating improvement of housing standards (*see: Mellacher et al v. Austria, para.47).*

However in difference from the impugned norm, which determines one and the same maximum rental payment to all apartments, without any differentiation, the Austrian Tenancy Law, assessed by the European Court of Human Rights established: how the basic and different additional rates of rent shall be determined; in what cases the restriction of the rental payment determined in the law is not binding (for example, if an architectural monument is being rented, if the rooms are not habitable, if there had been great investments); ”ceiling” of the rent, depending on the category of the apartment (living space, conveniences); in which cases rental payment may be increased (investments are urgently needed); accounts about the spent money; calculation of maintenance costs; if the rental agreement has been concluded before the law taking effect the rental payment shall be decreased to the ”ceiling of the rent” if it is required by the tenant. In such cases the ”ceiling” of the rent is increased for 50% from the rental payment determined by the law. If the lessor does not agree to decrease of the rental payment then it is possible to address the administrative institution and then – the court (*see: Mellacher et al v. Austria, para. 32).*

If the legislator would have wanted to reach any of the above aims, when passing the impugned norm, it would be acknowledged as legitimate.

However, the impugned norm is not appropriate for reaching these aims. First of all – in difference from the respective Austrian Law, it does not connect the rental payment with a concrete apartment category. Thus the impugned norm does not decrease but in many cases increases difference in rental payment for equivalent apartments, which are rented by pre-reform tenants and other tenants; thus delaying creation of a balanced apartment rental market.

Secondly, the impugned norm does not stimulate improvement of housing standards, because the protection to the pre-reform tenants is guaranteed only as long as they live in the same dwelling space, which they occupied fifteen years ago, regardless of the fact that during this time the composition of the family and the needs have changed; inter alia also in cases, when children have been born and the family needs a bigger flat.

Thus the impugned restrictions shall not be justified by the aim pointed out by the submitters of the claim and the State Human

Rights Bureau – to develop the market of apartment rent, to decrease the excessive and ungrounded differences of rental payment for equivalent apartments and stimulate improvement of housing standards.

17. The Saeima in its written reply inter alia points to the legal trust of the tenants, namely, that the State shall realize its duty and continue protecting their interests in a certain way. In the written reply it is mentioned: " Such conclusion is rooted in the circumstance that the tenants of the denationalized houses could not privatize the dwelling space. Therefore restriction of rental payment was one of the mechanisms, which ensured balance between the interests of the tenants and lessors and reached a socially fair aim. The fact that the State is trying to reach such an aim also at the present moment is testified by the above normative acts, which the Cabinet of Ministers has adopted or is still elaborating" (*lietas materiālu 1. sējuma 58.lpp.; Vol.I, p.58 of the materials in the matter).*

The protection of rights and legal interests of other persons may serve as a legitimate aim for the restriction of fundamental rights, determined in the Satversme. For establishment of it one shall first of all assess whether there exist respective rights and legal interests of other persons for the protection of which the impugned restriction has been determined.

Simultaneously one shall take into consideration also the fact that the submitters in their claim point out the violation of Section 1 of the Satversme only regarding the house-owners of denationalized and returned to the lawful owners houses.

17.1. "When assessing the compliance of the impugned Law with Section 105 of the Satversme, […] one shall take into consideration that the above Satversme Section shall not be analyzed separately, without analyzing Section 1 of the Satversme. The Satversme is a cohesive whole and the legal norms, incorporated in it are mutually closely connected. To complete and more impartially establish the contents of the above norms, they shall be interpreted as read together with other norms of the Satversme (*the Constitutional Court Judgment in case No. 2005-12-0103; Item 21.1).*

"The duty of the principles following from Section 1 of the Satversme – which shall be regarded as one of the cornerstones of the Republic of Latvia as a democratic and law-governed state – is to ensure that other legal norms, also those, incorporated in the Satversme, shall be correctly applied and that their application, as well as the result of their application complies with the requirements of a law-governed state. For example, neither Section 1 of the Satversme, nor Section 105 denies the

right of the legislator to make amendments to the existing legal regulation, which complies with the Satversme. However, in a democratic and law-governed state the principle of legitimate trust requires to envisage considerate transition to the new regulation, when introducing amendments (*the Constitutional Court Judgment in case No. 2005-12-0103; Item 24).*

When assessing whether the impugned norm complies with the principle of legitimate trust, one shall ascertain:

1) whether the pre-reform tenants and the submitters of the claim had the right to trust that the legal regulation would not be changed;
2) whether such a trust was reasonable and well-grounded;
3) whether the legislator, when deviating from the previous legal regulation, had envisaged a considerate transition to the new regulation.

17.2. As has been already mentioned, the Laws ”On the Return of Buildings to their Legal Owners” and ”On the Denationalization of Buildings in the Republic of Latvia” in the wording adopted on October 30, 1991 established that ”the owners must honor all leases and rental agreements previously made by present building manager”.

Rental agreements of pre-reform tenants were concluded in circumstances when the rental payment was determined under the administrative procedure and not as the result of the agreement reached between the tenant and the lessor. As can be seen from the rental agreements of the pre-reform tenants attached to the matter (*sk.lietas materiālu 1.sējuma 111. - 187. lpp.; see Vol.I, pp. 111–187 of the materials in the matter),* rental payment was not indicated in the apartment standard rental agreements.

Section 11 (the first Paragraph) of the Tenancy Law, which took effect on April 1, 1993 referred to all rental agreements, regardless of the fact in the building of what owner the apartment was located and determined that ”a rental payment shall be determined on the basis of a written agreement between parties, however it shall not exceed the maximum rental payment, determined by the government”.

In 1994 Amendments were made to Laws ”On the Return of Buildings to Their Legal Owners” and ” On the Denationalization of Buildings in the Republic of Latvia”, which determines that ”the owners must honor all the terms of the leases and rental agreements previously concluded by the present manager of the denationalized building, excluding cases, anticipated in this law” and that rent shall not exceed without consent of the respective tenants the level of rents set by the Cabinet of Ministers.

Thus, **at the time when process of return of buildings was commenced, equal restrictions were determined regarding the amount of the rental payment, which complied with the phase of the property reform of that period.**

17.3. The wording of Section 11 of the Tenancy Law was amended only beginning with January 1, 1997. At the beginning it was anticipated by the Cabinet of Ministers August 6, 1996 Regulations No. 306 ”Amendments to the Law ”On Residential Tenancy””, adopted under Section 81 of the Satversme. When discussing these Regulations at the Saeima the above Section was expressed in a various wording, determining that ”a rental payment shall be determined on the basis of a written agreement between parties, except the cases specified in Paragraphs 2, 3 and 4 of this Section”.

The fourth Paragraph of this Section determined that ”in denationalized houses and buildings, which have been returned under the procedure anticipated in the law ”On the Return of Buildings to Their Legal Owners” as regards tenants, who have rented residential space in the buildings before denationalization (return to the owners), rental payment shall be determined on the basis of a written agreement between the parties and in accordance with the Cabinet of Ministers Regulations on the procedure of calculation of the rent of an apartment”.

When debating about this norm at the Saeima session, the temporary nature of the solution was stressed. Deputy Jānis Lagzdiņš – the Head of the Saeima State Administration and Municipal Affairs of that time – expressed the viewpoint that ”private apartments shall be divided into two parts: the not rented or free apartments and as regards these apartments the house-owners […] might be given rather great freedom and have the right to freely determine rental payment in each concrete case, so that the house-owner could receive certain income for maintenance and repairs of the house.

Another question is how to handle apartments, which are a private property but are rented to the third persons? […] To my mind as regards the denationalized buildings a week ago the Parliament has taken the right decision by allowing the Cabinet of Ministers to determine in the whole State ”the ceiling” of the rental payment in the so-called denationalized houses” [*Saeimas 1996.gada 28. novembra sēdes stenogramma; Verbatim Report of the Saeima November 28, 1996 session;// Latvijas Vēstnesis, No. 207/208 (692/693), 03.12.1996.].*

Thus the legislator considered determination of rent for the pre-reform tenants under administrative procedure as a temporary or transitional measure, which is characteristic of property reform. In the above circumstances the State undertook the liabilities of regulating relations between the house-owners and pre-reform tenants by determining the maximum amount of rental payment. The duty of the State, when determining the amount of it, was to ensure a fair

balance between the rights of the house-owners and the pre-reform tenants as well as to observe the principles of a law-governed state and the fundamental rights, fixed in the Satversme.

17.4. At the commencement of the realization of property reform the legislator had determined several restrictions for the house-owners, which follow from the liabilities, which the former managers of the house had undertaken. Simultaneously one might become convinced that the restrictions with time would be cancelled. In several issues gradual cancellation of the restrictions was implemented. Thus, for example, initially both the lease or rental agreements, inter alia agreements in accordance with which the residential space was rented to State institutions, concluded by the present manager were mandatory for the owner of the house denationalized or returned to the legal owner. The law envisaged a seven year long period during which it was prohibited to turn out pre-reform tenants without providing another residential space.

The house-owners experienced the right to trust that the imposed administrative restrictions, which were necessary at the beginning of the reform, would in due time be cancelled in a reasonable way. Taking the trust into consideration, they made the choice of regaining the property or not doing it as well as planned their future activities with the property. However, the promises, expressed during the beginning of the reform could not create confidence that the house-owner would be able to freely and using his/her judgment determine the amount of the rent to the pre-reform tenants. The owner had the right of trusting that the State would in due time determine a reasonable solution to the forced rental relations.

In a democratic state the principle of legitimate trust (trust in law) does not forbid carrying out extensive and vital reforms, however, ”an endless in time reform” contradicts this principle. **By consequently realizing the reform, the State had the duty to bring it to a reasonable regulation, under which the rent, determined under administrative procedure, would be substituted by a lasting, adapted to the conditions of market economy solution, which would balance the interests of both – the pre-reform tenants and house-owners.**

17.5. In realization of the principle of legitimate trust of importance is the fact whether trust of a person in a legal norm is lawful, well-grounded and reasonable, as well as the fact whether the legal regulation on its essence is reasonably definite and constant so that one can trust in it (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01; Item 3.2 of the concluding part).*

Neither at the beginning of the reform, nor during it had the legal norms anticipated that the pre-reform tenants should have a specific, different from

the other tenants' status, even after the end of the process of the reform. Initially they were guaranteed rental rights with the same provisions as any other tenant. When the legislator resolved about liberalization of the rent market regarding other tenants, a reservation was made that the status of pre-reform tenants as regards the sector of rent was temporary.

Ungrounded is the viewpoint, expressed in the Saeima written reply, that the trust of the tenants was connected with the fact that they – in difference from the tenants of State and local government apartments – were not given the possibility of privatizing them. Return of the nationalized and illegally expropriated buildings to the former owners was a constituent part of the property reform, in the framework of which the historical justice was first of all rehabilitated. Tenants, who lived in those houses, were not in equal and comparable circumstances with persons, who lived in State or local government houses. Privatization of the State property was another constituent part of the reform, and regulation in the framework of it could not create for the pre-reform tenants legitimate trust in the possibility of privatization of their apartments. In this process pre-reform tenants were in equal and comparable circumstances with the persons, who – for example – during the period of commencement of the reform rented residential space in the apartment houses, which were the private property of citizens. These persons also had no right to privatize their residential space, even though they had the status of tenants.

Issues, which are connected with the fact whether pre-reform tenants were insured sufficient rights to participate in the process of privatization of State and local government property, shall not be reviewed in the framework of this matter. These issues shall be solved within the framework of the process of privatization of State and local government property.

The Republic of Estonia Supreme Court in case on the constitutionality of the Amendments to the Tenancy Law has also concluded that "by determining restrictions to rent the State has not promised to connect cessation of these restrictions with adoption of other norms, which would increase well-being of the tenants of the returned houses. Even though different solutions have been discussed during the parliamentary debate […] no obligation of the State has arisen from the law. The principle of legitimate trust may not be applied to require from the legislator measures of support, which have been discussed in political debates" (*2004. gada 2.decembra sprieduma lietā No. 3-4-1-20-04 23. punkts; Item 23 of 2 December, 2004 Judgment in case No. 3-4-1-20-04;// www.nc.ee).*

Thus during the period of the property reform pre-reform tenants had not right to trust that even after the completion of the process of the reform they would have a specific, different from other tenants, status and they would be able to eternally live in the same apartment and pay a

substantially lower rent than the other persons, who live in the respective buildings with residential space of equal quality.

17.6. However pre-reform tenants had the right to believe that the State would take care about the protection of their rights and ensure a considerate transition from the amount of rental payment, determined under an administrative procedure, to relations of rental agreements in a reasonable way, which would equally satisfy the interests of both – pre-reform tenants and the house-owners.

One shall take into consideration that up to 2005 no relevant measures supporting the tenants were implemented. At the Court session S.Šķesters acknowledged it. His answer to the question of the Court, what programme of support was realized till the end of 2004, was laconic : "There was simply no programme" (*lietas materiāla 4.sējuma 73.lpp.; Vol.IV, p. 73 of the materials in the matter).* When commenting on the inactivity of the State till 2005 S Šķesters told: " as a matter of fact no funds were allocated for the solution of this problem. […] Actually the ceiling of rent was imposed at that period, but other liabilities both by the politicians and perhaps by the other parties were not realized" (*lietas materiāla 4. sējuma 65. lpp.; Vol. IV, p.65 of the materials in the matter).*

Not only the fact that no funds have been allocated for implementation of the provisions of the transitional period testifies that for many years the State has not been interested in the normalization of the relations of the tenants and the lessors of the houses denationalized and returned to the legal owners. Lack of information about the extent of the problem clearly indicates the above unconcern. At the Court session S.Šķesters informed that in 2004 the responsible Saeima "Commission had no precise information about the number of tenants living in these buildings, as there was no information about it at the local governments either" (*lietas materiālu 4. sējuma 68.lpp.; Vol.IV, p. 68 of the materials in the matter).* I.Oša also certified that there had been lack of information (*sk. lietas materiālu 4. sējuma 82.lpp.; see: Vol. IV, p.82 of the materials in the matter).* She notes that by identifying the situation about the past activities in the territories of local governments when developing residential space, it has been established that funds at the disposal of local governments are scarce and no funds are allocated for the construction of new buildings. Thus the housing fund, which is there, is in most cases privatized but the new one has not been created. And if there is no housing fund, then the local governments have not been able to solve the housing problems of those persons, who are queuing up for apartments (*sk. turpat; see the same source).*

The State had carried out only separate activities in this sector. In the Law "On the Privatization of State and Local Governments Apartment Houses" the legislator determines that apartment for which utilization a dwelling space rental contract has not been signed shall publicly be offered for privatization in a public auction by the State or a local government. As concerns these auctions

advantages are determined for two groups of residents, inter alia physical entities, who are renting dwelling space in houses denationalized or returned to the legal owners, on the basis of a dwelling space rental contract, which has been concluded before denationalization of the house or returned to the legal owner buildings as well as to physical entities against whom petitions to the court have been made for termination of the rental contract and to whom the owners have no duty of providing other equivalent dwelling space. Only in case if the persons of the two groups mentioned in this Law do not appear, other persons obtain the right to participate in the auction.

At the Court session I.Oša explained that the tenants have been really inactive in using the above possibility and in most cases the apartments, procured in auctions, were immediately sold. Therefore in 2005 the Law was amended, determining that the apartments, which might be privatized should first of all be offered for rent (*lietas materiālu 4.sējuma 84.lpp.; Vol.IV, p. 84 of the materials in the matters).*

It is not the duty of the Constitutional Court to assess in the framework of the matter how effective the performance of the above norms has been, however, from the discussion of the impugned norm at the Saeima session as well as from the viewpoints expressed by the invited persons at the Court session, it is evident that the measures undertaken till January 1, 2005 have been insufficient for the protection of the rights of the pre-reform tenants. It follows from the words of I.Oša at the Court session that participation of the State in payment of a benefit for vacating of the dwelling space, in issuing warrantees for purchasing or building dwelling space; and granting of earmarked subsidies to the local governments was commenced only after the adoption of the impugned norm. In 2005 normative acts, which regulate support measures, have been elaborated. In its turn, the funds are planned only for 2006, therefore, real activities of the State have taken place only for two months (*sk. lietas materiālu 4.sējuma 88. lpp.; see Vol.IV, p. 88 of the materials in the matter).*

Thus the State by its inactivity has violated the legitimate trust in the opinion that they will be able to solve in long term the issues on their dwelling space, either by concluding a reasonable agreement with the owner of the denationalized or returned to the legal owner building, or by finding another durable solution.

The deputy Kārlis Šadurskis also stressed it at the Saeima session, in which the impugned norm was discussed: ”Instead of offering a concrete solution, a three-year-long plan for tormenting tenants and house-owners is offered: for the house-owners – further degradation of the building; in its turn for the tenants – gradual increase of the rent ceiling, thus – a gradual torment. And after three years – again nothing!” [*Saeimas 2004. gada 17. novembra sēdes stenogramma; Verbatim Report of the Saeima 17 November, 2004 session;//Latvijas Vēstnesis, NO. 187 (3135), 25.11.2004.).*

However the above inactivity could not create for the pre-reform tenants legitimate trust or certain concrete rights, protection of which would be the legitimate aim for restricting by the impugned norm the fundamental rights of the house-owners, determined in Section 105 of the Satversme.

17.7. A legitimate aim for restricting the fundamental rights of the house-owners is the protection of the trust in law of the pre-reform tenants only as far as this trust concerns the right of anticipating a reasonable regulation by the legislator regarding the procedure under which the house-owner and the pre-reform tenant reach an agreement on appropriate payment in forced rental relations.

However, as has bee concluded earlier, the impugned norm does not anticipate such regulation. Thus, reference to the protection of the legitimate trust of pre-reform tenants cannot justify the impugned restrictions.
Thus the impugned norm does not comply with Section 105 of the Satversme.

18. The Constitutional Court recognizes that the statement of the submitters of the claim that the impugned act violates legitimate trust of the house-owners shall be assessed.

By Paragraph 4 of July 5, 2002 ”Amendments to the Law ”On Residential Tenancy” the legislator anticipated gradual increase of the maximum rent for pre-reform tenants as well as the moment after which the rent for this category of tenants would not any more be restricted by the law.

This Law clearly and precisely established the date – January 1, 2005 – from which the concrete restrictions lose validity. The house-owners might trust that this norm would be realized and thus plan their activities with the property. Trust of the house-owners to realization of the above promise shall be protected, as it has its economic value – the property, with which it is possible at this moment - or will be possible in the future - to deal freely is comparatively more valuable.

The Constitutional Court has stressed that Section 1 of the Satversme does not anticipate prohibition of incorporating such amendments into legal regulation, which comply with the constitutional principles fixed in the Satversme. In a democratic state the principle of trust in law requires the legislator to envisage a ”considerate” transition to a new regulation when adopting the above amendments. Reasonable terms shall be established or due compensation for the incurred losses shall be anticipated (*see: the Constitutional Court March 25, 2003 Judgment in case No. 2002-12-01, Item 2 of the concluding part).*

However the legislator amended the above regulation by adopting the impugned norm in big haste ten days before the envisaged cancellation of the restrictions. The Law was promulgated two days before it taking effect, regardless of the fact that it concerned a wide range of persons and essentially changed their position. Such an activity of the legislator in a democratic, law-based state is inadmissible.
Thus the impugned norm in unconformable with Section 1 of the Satversme.

19. By declaring the impugned norm as unconformable with Sections 1 and 105 of the Satversme, there is no need to assess its compliance also with Section 91 of the Satversme.

20. When taking the decision on the moment as of which the impugned norm loses validity, the Constitutional Court takes into consideration the fact that the legislator has materially violated both – the interests of the owners of the denationalized and returned to the legal owners buildings and those of the pre-reform tenants. For preclusion of violations of fundamental rights, established in the Judgment, more extensive and far-reaching changes of regulation of legal rental relations are needed than it is possible to reach by declaring the impugned norm null and void.

Besides one has to take into consideration that pre-reform tenants have trusted to the solution, determined in the impugned norm, therefore a momentary declaration of it being invalid would create essential violation of their rights. Besides, no mechanism has been elaborated for protecting the tenants from the involuntariness of the lessors.

The situation, which would arise if no legal act regulated the above Section, would even less comply with the Satversme. In this situation it is permissible (*see the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 3 of the concluding part)* to leave the norm, which is unconformable with the Satversme, valid to give the legislator the possibility of finding the solution of the situation by which the rights of the house-owners and the pre-reform tenants are observed.

Time is also needed to create a more effective mechanism for averting arbitrariness of those house-owners, who are trying to achieve vacation of the apartments or reach agreements on a greater rental payment by illegal activities.

21. The submitters of the claim have contested the whole Section 13 of the Law ”Amendments to the Law ”On Residential Tenancy””. The impugned restrictions are incorporated in Paragraphs 4 and 8 of the Transitional Provisions of the Tenancy Law. However, Paragraphs 5 and 7 of the Transitional Provisions are inseparably connected with

Paragraph 4. When declaring Paragraphs 4 and 8 as unconformable with the Satversme and null and void, Paragraphs 5 and 7 shall also be declared as invalid.

22. In its turn supplementing Transitional Provisions of the Law ”On Residential Tenancy” with Paragraph 14 on its merit has not been contested and this Paragraph is not inseparably connected with other impugned norms. The above Paragraph does not anticipate any restrictions to the rights of the submitters of the claim. Thus, it complies with the Satversme and shall not be declared as invalid.

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

hereby rules:

to declare Section 13 of December 20, 2004 Law ”Amendments to the Law ”On Residential Tenancy” in the part on Amendments to Paragraphs 4, 5, 7 and 8 of the Transitional Provisions of the Law ”On Residential Tenancy” as unconformable with Sections 1 and 105 of the Republic of Latvia Satversme and invalid as of January 1, 2007.

The Judgment is final and allowing of no appeal.

The Judgment takes effect on the moment of its announcement.

The Chairman of the Court session A.Endziņš