



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, June 4, 2002

## Judgment

in the name of the Republic of Latvia

**in case No. 2001-16-01**

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session A. Endziņš, the justices A.Lepse, R.Apsītis, I. Čepāne, J.Jelāgins, I.Skultāne and A.Ušacka

with the Court session secretary Egija Freimane

in the presence of the representative of the applicant – the State Human Rights Bureau – Līga Biksiniece

and the authorized representative of the institution – the Saeima – which has issued the challenged acts Eduards Ikvilds

under Article 85 set by the Republic of Latvia Satversme (Constitution), Article 16 (Item 1) and Article 17 (the first part of Item 8) of the Constitutional Court Law

in a public hearing in Riga on May 7, 2002 adjudicated the case

**” On the Compliance of the Requirement, Incorporated into the Public Procurator’s Office Law (the first part of Article 33)” , the Republic of Latvia Law ”On Advokatūra / on Legal Profession / (Article 14, Paragraph 3)” and the Notary Law (Article 9, Paragraph 3), Envisaging the Necessity of Recognition by the Faculty of Law of the University of Latvia with Articles 91 and 106 of the Republic of Latvia Satversme””.**

## **The establishing part**

On June 19, 1991 the Supreme Council of the Republic of Latvia passed the Education Law, which determines that the higher educational institutions are autonomous and shall work in accordance with study programs, drafted by them.

On April 27, 1993 the Supreme Council adopted the Republic of Latvia Law "On Advokatūra". Article 14 (Paragraph 3) of the Law incorporates the challenged norm - the requirement "to have an advanced degree in law from the University of Latvia or any other academic institution, which, in the opinion of the Faculty of Law of the University of Latvia, is comparable".

Identical requirements have been determined also in Article 9 (Paragraph 3) of the Notary Law, which was adopted on June 1, 1993 and in Article 33 (the first part) of the Public Procurator's Office Law, adopted on May 19, 1994.

On November 2, 1995 the Republic of Latvia Saeima passed the Higher School Law. In accordance with the Law higher schools shall implement academic and professional study programs. After completion of the study programs the students are granted the academic degrees—the Bachelor's or the Master's or the scientific degree of a Doctor. In its turn after completion of the vocational (professional) study program, the vocational degrees of the fourth and the fifth levels as well as vocational education Bachelor's and Master's degrees are granted.

Article 57 of the Law determines that bachelor's and master's study programs shall be created in accordance with the state academic education standard.

On November 28, 1995 on the basis of the Higher School Law norms, the Cabinet of Ministers passed Regulations No. 370 "On Accreditation of Higher Schools", on July 2, 1996 – Regulations No. 238 "On Licensing of Higher Schools" and on July 1, 1997 – Regulations No.231 "On the Samples of the Higher School Education Diplomas and Scientific Degree Diplomas". On June 5, 1996 the Ministry of Education and Science passed the Directive "On the Procedure of Accreditation of Higher Schools".

On October 9, 1998 the Ministry of Welfare with its Directive No.246 confirmed the Classification of Occupations. The Directive was passed in accordance with June 16, 1998 Cabinet of Ministers Regulations No. 222 "On the Unified Classification System of Economic Information".

Minimum fundamental qualification requirements for all the professions, practiced in the Republic Latvia, have been determined in accordance with the international practice and International Standard Classification of Occupations (ILO, 1988). In compliance with one of its parts, No.242– "The

Lawyers”, the required minimum education level, ensuring qualitative work in such professions as those of the procurator, advocate, notary and also of the judge is the highest academic education in law and in separate cases even a scientific degree.

On October 29, 1998 the Saeima adopted a new Education Law. In conformity with this Law the highest education may be obtained by acquiring the vocational study program or the program of academic education as well as completing both- the academic and the vocational study programs.

Article 1 (Paragraph 10) of the Law establishes that accreditation of the education program means the acquisition of rights by an educational institution to issue an educational document recognized by the state or the acquisition of an education corresponding to a specific education program. In the course of accreditation the quality of the implementation of the particular education program is to be evaluated.

Article 14 (Paragraph 19) envisages that the Cabinet of Ministers shall determine the state standards within education, which determines the strategic goals and basic tasks of the subject of education, the content, the criteria and procedure for evaluation of the education acquired.

In its turn the second part of Article 32 of the Education Law determines that observance of the State Education Standard is mandatory for any legal and physical person which/who is working out and implementing corresponding education programs.

On October 16, 2001 the Cabinet of Ministers passed Regulations No. 442 ” On Accreditation of Higher Educational Establishments and the Study Programs” (henceforth – Regulations on Accreditation), regulating the procedure, under which higher educational establishments as well as their programs for acquiring the highest professional (vocational) education and programs for obtaining the professional or academic degree are to be accredited.

On November 20, 2001 the Cabinet of Ministers adopted Regulations No. 481 ” Regulations on the Highest Education Standard of the Second Vocational Level”. It determines the bachelor and master study programs for vocational higher education, the basic goals and tasks of the subject of vocational higher education as well as the minimum number of credit points, needed for acquiring of the program.

Simultaneously, Items 10, 21 and 26 of the Regulations envisage, that the study course choice for acquiring bachelor and master professional degrees as well as the qualification to be granted shall be determined by the standard of the corresponding profession.

In compliance with Article 14 (Paragraph 11) of the Education Law, the Cabinet of Ministers passed Regulations No. 3 "The Procedure of Licensing Study Programs to be Implemented in the Highest Educational Establishment" on January 3, 2002.

On June 20, 2001 the Saeima adopted the Law " On Regulated Professions and the Recognition of the Vocational Qualification" (henceforth – the Law on Regulated Professions). The objective of this Law is to ensure the compliance of professional activity to a particular quality requirements and criteria if such activity is connected with the protection of public interests, its safety and health protection as well as to protect separate publicly important professions against unskilled persons being engaged in them by establishing increased requirements for those professions. The second part of Article 3 of the Law establishes that the right to operate in a regulated profession is held by a person who has acquired an accredited education program or a vocational qualification corresponding to such profession, which is certified by documents certifying education or vocational qualification issued within the Republic of Latvia or by documents certifying education or vocational qualification issued in other countries, which, in accordance with this law and international agreements binding upon the Republic of Latvia, are recognized within the Republic of Latvia. However, the seventh part of Article 2 of the Law determines that the provisions of this Law do not apply to those events when activity in regulated professions is connected with the execution of state administration or the power of justice functions.

On January 3, 2002 the Cabinet of Ministers passed Regulations No.2 "On the State Academic Education Standard".

**The submitter of the application** requests the Constitutional Court to declare the challenged norms as unconfomable with Articles 91 and 106 of the Republic of Latvia Satversme (henceforth – the Satversme) and null and void as from the day of the announcement of the judgment.

The applicant points out that the requirement to have the highest education in law is well-grounded however the reference to one particular institution of the higher education incorporated into the challenged norms is discriminating with regard to students of other accredited higher school programs in law. The rights granted to the Faculty of Law places the graduates of other higher schools in an unequal situation if compared with the students of the above Law Faculty, creating inequality and discrimination in the labor market.

The applicant holds that there already exists determined by the State system of evaluation and acknowledgement – accreditation- to assess the study programs and the performance of the higher educational institutions in Latvia. And the process of accreditation is based on equal criteria. After accreditation

the higher educational establishment is considered to have been recognized by the State and shall be of equal estimation level with other institutions of the highest education, acknowledged by the State. In its turn the graduates of the accredited higher schools shall be considered as the acquirers of the state recognized education.

If the persons have acquired education at the educational establishment of equal standing then questioning the acquired knowledge or repeated evaluation of the quality of education of one institution cannot be well-grounded.

It is stressed in the application that there is no objective reason to refuse equal rights in choosing occupation to all the graduates of accredited higher schools, who have obtained recognized by the State advanced education in law and have received diplomas, at the same time determining ungrounded and discriminating additional requirements and creating advantages to the graduates of just one higher educational establishment.

**The Saeima** is of the viewpoint that the challenged legal norms are not contradicting Articles 91 and 106 of the Satversme.

In the written reply it is pointed out that the practice of the University of Latvia expressing its conclusion has been historically created. After the renewal of the independence of Latvia the Republic of Latvia Supreme Council adopted several laws to create and strengthen the independent system of the judicial power institutions as well as to ensure succession in the principles of functioning and status of the judicial power institutions and principles of the choice of the personnel.

The challenged norms have served to determine unified criteria of knowledge and skills to ensure qualitative and professional performance of advocates, notaries and procurators. Thus to their mind the objective of the challenged norms is legitimate and is to be considered as proportionate to reach the above objective.

When preparing the case for the review, the concerned institutions were asked to express their viewpoint.

**The Faculty of Law of the Latvian University** holds that the only restriction envisaged in the challenged norms is the requirement to make use of the program standard for education in law, which is used in the Faculty of Law or is recognized by it. To their mind other higher educational institutions do not have equivalent programs in law.

**The Board of Sworn Advocates** points out that all the programs, needed for the profession of advocates, are realized at the Faculty of Law. The Faculty is

capable of expressing an objective conclusion on the compliance of programs, accredited at other higher educational institutions.

**Procurator General's Office expresses the viewpoint** that there is no necessity to delegate the right of evaluating the highest education in law to a specific institution. In compliance with the second part of Article 33 of the Prosecutor's Office Law, the Council of the Procurator General experiences the right of determining the procedure under which the candidate for the office of a procurator undergoes in-service training and takes the qualification exam.

**The Board of Sworn Notaries** holds that the above Article of the Law has to be amended and the reference to the requirement of the recognition by the Faculty of Law deleted.

**The Ministry of Education and Science** points out that the State system for accreditation of higher educational institutions and their programs has been elaborated. The Cabinet of Ministers October 16, 2001 Regulations "On the Accreditation of Educational Establishments and Study Programs" envisage that after accreditation every higher educational establishment supplements the particular professional standard to the study programs and, if there is no particular standard, references of the vocational (professional) associations or the employers are added to it. At the present moment the Ministry is elaborating the standard for the profession of the lawyer.

The Ministry holds that there is no need to maintain the right of the Faculty of Law evaluating the qualification of a lawyer, graduating from other higher educational establishment, incorporated into the challenged norm.

**The Business School Turība, the Rēzekne Higher Educational Establishment, the Latvian Police Academy, the Business Institution RIMPAK Livonia and the Baltic Russian Institute** hold that the challenged norms are discriminating with regard to the graduates of the above institutions.

**At the Court session the authorized representative of the applicant Līga Biksiniece** upheld the request and pointed out that the quality of every higher educational establishment and its study programs as well as their compliance with the criteria, determined in normative acts, were assessed at the open accreditation process. Decisions on the above issues are adopted by collegial institutions, appointed by the State. The State Education Inspection ensures supervision of the higher educational institutions and the quality of the programs in between accreditations.

In its turn the conclusions are adopted by secret ballot at the Faculty of Law. The criteria, used in the process of evaluation, are not uniform and objective.

Even though the adopted decisions infringe the rights of certain persons to qualify for the offices mentioned in the challenged norms, the above persons are not informed about the decisions. Besides the procedure of appealing against the decision of the Faculty of Law has not been established either.

An objective, determined by laws and other normative acts, system of evaluation of the quality of education has been determined in the state. Thus, granting the right to repeatedly evaluate the quality of education just to one of the participants of the specific service market is ungrounded and unnecessary in a democratic society.

**At the Court session the authorized representative of the Saeima- the sworn advocate Eduards Ikvilds** upheld the viewpoint that the application was ungrounded and had to be dismissed.

The University of Latvia – to his mind- was the only higher state institution where a really qualitative education in law, mandatory for the pretenders to the offices, mentioned in the challenged norms, could be acquired. The other higher educational institutions did not guarantee as qualitative and extensive knowledge as the University. Thus, granting the controlling function on the quality of education in law to the Faculty of Law has been a well-grounded act. The objectivity of the conclusions of the Faculty of Law can be confirmed by the fact that up to the present moment no decision of the above faculty has been appealed against. The public is interested in having officials capable of rendering qualitative services. Thus, to his mind, the limitations incorporated into the challenged norms are imperative, proportional and valid.

At the Court session **the invited person –the Associate Professor of the Faculty of Law and the Acting Pro-dean of the Latvian University Janis Lazdiņš** pointed out that the rights, granted to the Faculty of Law were well-grounded and objectively imperative. Education in law, acquired at other higher educational establishments could remarkably differ from that obtained at the Faculty of Law. To his mind some higher schools do not have the sufficient number of academic specialists; others are realizing narrowly specialized programs in law. When carrying out the act of evaluation, the Faculty of Law usually takes into consideration the fact whether the particular higher school conforms or does not conform with the university type. In the same way compliance of the study programs and their duration with the "A" group study programs of the Faculty of Law is assessed. In case of a negative conclusion the particular person may acquire additional knowledge at the Latvian University and then receive a positive conclusion. The above approach insures the required quality of a lawyer qualifying for the office of an advocate, notary and a prosecutor.

**The invited person – the Director of the Department of the Ministry of Highest Education and Science Jānis Čakste** at the Court session pointed out that the higher schools and their programs are assessed at the process of accreditation. Both the Latvian and foreign experts take part in that process. There are general education and vocational (professional) standards in the state. Standards for the professions of the advocate, notary and procurator have not been determined but the standard for the profession of the lawyer is being elaborated. In cases when there is no professional standard, references of the employers are taken into consideration when accrediting the study programs. The criteria used by the Faculty of Law, namely, the type of university or no university and the number of professors at the institution, is insufficient to evaluate the program and the higher education institution in total. Just the right of every graduate of any higher school to participate in the qualification examination to occupy the office of an advocate, a notary or a procurator might objectively prove what the quality of this or that higher school is.

**The invited person – the Director of the Higher Professional Study Program "the Lawyer", the Associated Professor of the Rēzekne Higher School Jānis Rozenbergs** at the Court session stressed that the programs of education in law for the Rēzekne Higher School had been elaborated with the representatives of the University of Latvia and the Police Academy participating. Some years ago the Procurator General's Office did not request the viewpoint of the Faculty of Law on the graduates of the Rēzekne Higher School. Several graduates have passed the qualification examination and are successfully working at the procurators' offices. The requirement as regards the officials of the judicial power and which is expressed in the challenged norms is ungrounded. The above requirement of having the highest education in law (in the University of Latvia or any other higher education institution compatible with the University in Latvia in accordance with the opinion of the Faculty of Law) does not concern the judges, who form the basis of the judicial power. Thus the graduates of other higher education institutions may successfully work as judges but just because of the challenged norms even after several years will not be able to take qualification examinations to be qualified for the office of an advocate, a notary and a procurator. The challenged norms are discriminating with regard to graduates of other higher education institutions, who have received diplomas on the highest education in law.

### **The concluding part**

1. The first sentence of the Satversme Article 106 establishes that "everyone has the right to freely choose their employment and workplace according to their abilities and qualifications". In its turn the second sentence of Article 91 of the Satversme envisages:" Human rights shall be realized without



discrimination of any kind". To ascertain whether the challenged norms comply with the above Satversme norms one shall establish:

- 1) if the right to choose the employment and workplace according to ability and qualification may be attributed to the challenged norms;
- 2) if the limitations determined by the challenged norms are in conformity with the requirements of Article 116 of the Satversme, namely, whether:
  - a) they are determined by the law, adopted under the established procedure,
  - b) have a legitimate aim,
  - c) they are indispensable in a democratic society (*see December 21, 2001 Constitutional Court Judgment in case No. 2001-04-0103 etc.*).
- 3.) if the limitations, established by the challenged norms, violate the fundamental rights in a discriminating way, namely, whether an ungrounded (i.e. is not justified by a legitimate aim and proportionate to it) differentiating attitude to persons, who are in equal and comparable circumstances, has been determined.

2. The rights established in the first sentence of the Satversme Article 106 correspond to the declaration incorporated into Article 1 of the European Social Charter, namely, "the right of everyone to gain his living by work, which he freely chooses or accepts".

State guaranteed protection i.e. an undertaking, which applies to the self-employed and to part time employment does not require a state to ensure that each person has a job. It requires that a state shall provide protection against forced labour and discrimination in employment practices (*see Gomien D, Zwaak L Law and Practice of the European Convention on Human Rights and the European Social Charter. Council of Europe Publishing, 1996, p. 382*).

The right included in Article 106 of the Satversme "to freely choose" requires the right for the individual to choose, however it requires neither to guarantee the job for everybody nor just the kind of work he/she wishes to choose. However the concept "to choose", included in this Article, shall be interpreted as the deliberate and purposeful activity of the person and not just the decision.

**2.1** The word "employment" has several meanings in the Latvian language, and one of them is "such a kind of work, which requires adequate qualification and is the source of the person's means of existence" (*see The Latvian Language Dictionary, Riga, Avots, 1998, p. 518*). The notion "employment" in the above meaning has been included also in the Satversme.

Several Constitutions of the European States incorporate similar norms, guaranteeing persons the right to freely choose their occupation or profession, like Article 47 of the Republic of Portugal Constitution or Article 12 of the German Federative Republic Basic Law, which among other things establishes that " all Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training".

The German Federative Constitutional Court has acknowledged that the above norm protects the freedom of the citizen of the up-to-date division of labour society in the especially important sector: it guarantees the individual the right to apply for any occupation if he/she considers himself/herself qualified for it, that is, it guarantees the right to make the employment serve as the basis of his/her life (*see BVerfGE 7,377,397*).

The concept "employment", included in Article 106 of the Satversme, does not mean just the economically useful job but also the profession closely connected with the personality of every individual. Personality of an individual develops and becomes apparent if the individual undertakes his/her profession as the task and basis of life at the same time making a contribution to the public benefit. Besides the concept "employment", incorporated into Article 106 of the Satversme embraces performance of the offices of the procurator, the sworn advocate and the sworn notary.

The German Federative Constitutional Court has stated that the right to freely choose the profession refers both to the regulated by state professions e.g. notaries (*see BVerfGE 80, 257/263/*) and to officials, judges, soldiers, i.e. to the occupations, which are connected with the state service (*see BVerfGE 7,377/397/*), even though a specific regulation may be envisaged.

**2.2** The rights to freely choose an employment, guaranteed by Article 106 of the Satversme, are inseparably connected with the abilities and qualifications of persons. Thus the limit of freely choosing the employment has been determined by Article 106 of the Satversme. That is, only those persons who have adequate abilities and qualifications, namely, the ability and quality to carry out the duties of a sworn advocate, a sworn notary or a procurator, (besides to discharge the duty in the Republic of Latvia) experience the right to freely choose the post of the procurator, the sworn notary or the sworn advocate.

Besides, among other things, Article 116 of the Satversme envisages that the rights of persons set out in Article 106 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State and public safety.

Qualification requirements for any profession include the minimum education level and a certain level of theoretic knowledge, abilities and responsibility,

needed to successfully discharge one's basic duties. Procurators, advocates and notaries are persons, who belong to the judiciary system. Each of them in a certain way participates in realization of the judiciary power. When taking into consideration the assignments and responsibility, the pretenders to the above positions might be demanded a lot as concerns the level and kind of education.

As concerns the posts of the procurator, the advocate and the notary a requirement to have the highest education in law is determined, not specifying whether it shall be academic or vocational. Therefore, by employing the systemic method of interpretation, the norms shall be interpreted and read together with the International Standard Classification of Occupations. It envisages that to hold the office of a procurator, an advocate as well as that of a judge, the highest academic education is a must. In its turn in compliance with the requirements of the legal norms (Article 1, Paragraph 2 of its first part of the Education Law and Article 1, Paragraph 2 of the first part of the Higher School Law) the above education may be acquired not only in academic studies but also in academic and vocational studies. Education of a corresponding kind and level is needed so that the representatives of the above legal professions might successfully discharge their duties, which require a really high level of theoretic and vocational knowledge and the ability of solving theoretical problems; e.g. to accordingly interpret the legal norms, to carry out research work in the legal sector, to consult the clients on legal issues, to accomplish the functions of the defense counsel, representative or the accuser at the court as well as prepare and certify legal documents.

No other legal norm of the highest legal force envisages the possibility of employing only the persons with the highest vocational education in the above professions. Thus, any person, who meets the requirements of the law and has acquired the highest academic education in law, may qualify for the office of the procurator, the advocate, the notary and the judge. The fact that the pretender has the highest education is confirmed by the diploma of the bachelor or the master degree, granted by a State accredited higher school after acquiring of the academic or academic and vocational study programs.

**3.** The Saeima in its written reply points out that by granting the rights incorporated into the challenged norms to the Faculty of Law, the legislator has been guided by the historical practice. The Faculty of Law has been granted the above rights already before.

After November 18, 1918 there was just one State recognized higher school where the diploma of the highest education in law could be obtained – the Latvian University.

At the time control over education acquired at the foreign higher schools, especially at those of the Soviet Russia (since 1922 – the USSR), which because of its class approach to legal sciences noticeably differed from the education acquired at other foreign states, was necessary.

As there were no institutions in Latvia, which at that time implemented the process of recognition of the foreign highest education diplomas in legal sciences, the government delegated this right to the Faculty of National Economy and Legal Sciences of the University of Latvia. Besides, evaluation of the documents of the pretenders to the office of sworn advocates (the assistants of the sworn advocates) was carried out. With regard to the pretenders to the above post the requirement for the highest education in law acquired at the University of Latvia or at the university comparable to it was an exception and not a general requirement.

On January 31, 1935 the Cabinet of Ministers adopted the Law "On Amendments and Supplement to the Laws of the Court Structure". The specific education qualification, incorporated into the first Paragraph of Article 280<sup>2</sup> was substantiated with several circumstances. On the one hand it was connected with an enormous "inflow" of new lawyers into advocacy. On the other hand the demand that the advocacy shall be national as well as the fact that " up to autumn of 1918 the revolution had not changed the higher school system in Russia and the study programs were the same, i.e. – to be recognized in Latvia" was of importance. (*Apsītis H. Explanations of the Minister of Justice on the Amendments and Supplements to the Laws on the Court Structure// Tieslietu Ministrijas Vēstnesis//1935, pp. 178, 182*)

Thus it may be concluded that, when taking into consideration the objective circumstances in the State, the government delegated only the task of comparing the foreign higher schools with the Latvian University to the Faculty of National Economy and Legal Sciences of the Latvian University.

**3.1.** After regaining the independence on September 26 , 1990 the Law " On Entrepreneurial Activity" was adopted. Even though this Law determined also the activity of educational establishments (schools, higher schools), at the time there were no institutions and normative basis within the authority of which was incorporated the accreditation of higher schools and study programs.

The Education Law, passed on June 19, 1991m, regulated neither the evaluation system of the quality of higher education nor the procedure and provisions for acquiring the vocational qualification. In accordance with the conditions of the second part of Article 43 of the Law, the State finances the preparation of the necessary specialists and sets its demands for the qualification of these specialists. There were no institutions, evaluating the diplomas on education in law acquired in the foreign countries.

Taking into consideration the objective situation and the purpose of reaching a legitimate aim, with the challenged norms the legislator granted the right of evaluating compliance of other higher schools with the Latvian University to the Faculty of Law.

At the time when the State had determined neither the standards of the highest education nor the criteria and procedure for the State recognition of the higher educational establishments, the requirement to evaluate whether the education of a procurator, a sworn advocate or a notary, which had not been acquired at the Latvian University, was in conformity with the qualification needed for holding the office of the above professions, was proportional for reaching the legitimate objective.

**3.2.** At the present moment the normative basis for the State recognition of both the Latvian higher schools and foreign institutions of higher education as well as for the recognition of the highest education and vocational qualification.

Article 9 (the first part) of the Higher School Law determines that "only those higher schools are entitled to issue the graduates the State recognized diploma for the acquirement of the highest education which are accredited and where the study programs accredited by the State is applied". In its turn the second part of the above Article establishes that "the diploma of the higher schools shall be recognized by the State... after the specific higher school and study program is accredited...". Neither the Higher School Law nor the Education Law establishes the provision that the State recognized diploma for the acquirement of the highest legal education issued by an accredited in Latvia higher school shall be recognized by the Faculty of Law or any other institution.

Besides, the first part of Article 11<sup>1</sup> of the Education Law, adopted on October 29, 1998 determines that the experts' examination of education documents issued abroad and documents certifying academic degree issued abroad is performed by the Academic Information Center. As the result of the experts' examination it is established what additional provisions must be fulfilled so that the education document issued abroad or academic degree granted abroad may be equalized to the education document being issued within Latvia.

As the result of experts' examination of document, the certification to which document being issued within Latvia or academic degree being granted within Latvia corresponds the education document issued abroad or academic degree granted abroad, shall be issued to the submitter of application.

4. In its written reply the Saeima points out that the objective of the challenged norms has been to achieve observance of unified requirements as concerns the highest education in law in Latvia.

The legislator has granted the right of equalization of the documents of other higher schools of Latvia to the University of Latvia, but has not established the limits and procedure of the process. The Faculty of Law determines the above criteria and procedure when realizing the process of evaluation.

Equalization of the diplomas of other higher schools or their graduates to those of the University of Latvia by the Faculty of Law is carried out after receiving an application from the employer or the vocational organization. As can be seen from the letter by the Faculty of Law to the Procurator General's Office, the process of evaluating higher schools differs. (*see The University of Latvia Faculty of Law 06.09.2001 No.46/268 to the Republic of Latvia Procurator General's Office "On Equalization of Diplomas"// volume 4 of the case, page 818*).

**4.1.** The Faculty of Law evaluates whether the higher school to be equalized is the higher school of the university or no university type. As concerns the latter, the Faculty of Law usually takes the decision that they cannot be equalized with the Latvian University.

As follows from the certificate by the Republic of Latvia Center for Evaluation of the Highest Education Quality, the highest education in Latvia in the State may be acquired at only one university type of higher schools – the University of Latvia and eight higher schools of the no university type. Thus only on the basis of the above division any of the no university type higher schools may be considered as incomparable with the University of Latvia. From the conclusion of the Faculty of Law it follows that e.g. The Rēzekne Higher School has not been equalized to the University of Latvia just because it is a higher school of no university type.

Initially the above approach had an objective reason. In compliance with September 18, 1991 Supreme Council Decision, which confirmed the status of the Latvian University, the main objective of this higher school was "to give the academic education and professional qualification...". In its turn the Higher School Law names one of the specific features of a higher school of no university type – studies are taking place in vocational education programs.

Thus there was a difference between the academic study programs of the Latvian University and the no university type higher school, in which the studies – in accordance with the law – were taking place under vocational education programs.

On February 5, 1998 the Saeima confirmed the new University of Latvia satversme. Article 2 of it determines that the main goal of the University of Latvia is to give the students an extensive academic and/or vocational higher education.

At the same time even at the no university type higher school like the Rēzekne Higher School, in accordance with its satversme, the students may acquire an extensive academic and vocational higher education.

Thus at other higher schools there is the possibility to acquire education of the same kind as at the Latvian University, however the graduates of the no university type higher schools do not experience the right to qualify for the office of an advocate, a notary and a procurator, as these higher schools are not equalized to the Latvian University.

**4.2.** In certain cases the Faculty of Law equalizes the diploma granted to particular persons, who have graduated from a no university type higher school, e.g., the Police Academy, to the diploma of the Faculty of Law. In these cases the scope and division of the law study course, acquired by the higher school graduate as well as its compliance with the program of the Faculty of Law are evaluated. In case of conformity the particular diploma is equalized to that of the Faculty of Law.

When stating the fact of unconformity of the education course in law with the mandatory part of the Faculty of Law program and its scope or absence of the documents, which are needed for the above assessment, equalization of the diploma to the diploma on higher education in law of the Faculty of Law is refused.

The institution or the vocational organization, which has requested equalization of the diploma is informed about the equalization or non-equalization. The higher school, equalization of which has been declined or the person whose diploma has been considered as uncomparable to the diploma of the Faculty of Law, receives no information from the Faculty of Law about the results of the evaluation.

The procedure of appealing against the decision of the Faculty of Law has not been determined either.

Because of the challenged norm persons, who have acquired the highest education in law under the State accredited study program at a higher school, which is not equalized to the University of Latvia, experience limited possibilities of choosing the employment at the office of the procurator, the sworn advocate or the sworn notary. These limitations noticeably influence the possibilities of the above persons to choose the above professions as their occupation.

The limitations have been determined with a legitimate aim; however at the present moment they are unnecessary for reaching the above aim. It is the more so because the highest legal education is just one of the criteria for the person to prove its suitability for holding the corresponding office.

Benefit from the fact that offices of a procurator, a sworn advocate and a sworn notary are filled only by persons, who have graduated from higher schools comparable with the University of Latvia is not proportionate with the restrictions of the fundamental rights, guaranteed to the persons, who have acquired education in law under the state accredited study program of another higher school by Article 106 of the Satversme.

Thus the challenged norms contradict Article 106 of the Satversme.

**5.** Article 91 of the Satversme establishes that human rights shall be realized without discrimination of any kind. Discrimination is an ungrounded differentiated attitude to persons who are in equal (comparable) circumstances (*see June 26 2001 Constitutional Court Judgment in case No. 2001-02-0106*).

Persons, who have graduated from the accredited higher schools with accredited study programs and have been granted the State recognized diploma on highest education in law, are in equal and comparable circumstances as they have been granted the qualification of the lawyer under the procedure determined by the State.

However the challenged norms establish a differentiated attitude towards persons, who have not graduated from the University of Latvia. The above persons do not experience the right to qualify for the office of a procurator, a sworn advocate or a sworn notary.

The above differentiated attitude, even though it has been determined with a legitimate objective, is neither well-grounded nor proportionate.

Thus the challenged norms are at variance with Article 91 of the Satversme.

### **The Substantive part**

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

#### **decided:**

to declare the norm incorporated into the first part of Article 33 of the Public Procurator's Office Law, Article 14 (Paragraph 3) of the Law on Advokatūra



(on Legal Profession) and Article 9 (Paragraph 3) of the Notary Law "...in the University of Latvia or any other higher education institution compatible with the University of Latvia in accordance with the opinion by the Faculty of Law of the University of Latvia" as unconformable with Articles 91 and 106 of the Republic of Latvia Satversme and null and void as of the day of publishing of the Judgment.

The Judgment is final and allowing of no appeal.

The Judgment has been declared in Riga on June 4, 2002.

The Chairman of the Court session

A.Endziņš