



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 11 January 2011

Case No. 2010-40-03

The Constitutional Court of the Republic of Latvia composed of the Chairman of the Court session Gunārs Kūtris, and justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra,

having regard to an application of the Administrative Case Department of the Senate of the Supreme Court of the Republic of Latvia,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (3), Article 17 (1) Indent 9, Article 19.¹ and Article 28.¹ of the Constitutional Court Law,

on 14 December 2010 in writing examined the case

“On Compliance of the First Sentence of Section 40 of March 2007 Cabinet of Ministers Regulation No. 173 “Procedures for the Acquisition of Driver Qualification, Procedures for the Acquisition and Renewal of the

Right to Drive a Vehicle and Procedures for the Issuance, Change and Renewal of Driving License” with Article 64 of the Satversme of the Republic of Latvia”.

The Facts

1. On 1 October 1997, the Saeima of the Republic of Latvia (hereinafter – the Saeima) adopted the Road Traffic Law. The purpose of this law is to prescribe the organizational and legal basis for road traffic procedures and road traffic safety in Latvia, in order to protect human life and health, the environment, as well as property owned by natural and legal persons.

On 8 July 2003, the Saeima adopted the Law “Amendments to the Road Traffic Law”, that, amongst the rest, provided for the following wording of Section 22 (1) and (2) of the Road Traffic Law:

„(1) The right to drive vehicles and a driving license may be acquired by a person who has reached the age specified in the law, who permanently resides in Latvia or who stays in Latvia for more than 185 days per calendar year and who does not have any medical contraindications for driving, except for the cases specified in the law, when the acquisition of such rights has been prohibited for a certain time period.

(2) A driving license shall be issued for a specific time period. The procedures for the acquisition and renewal of the right to drive a vehicle and the procedures and time periods for the issuance, change and renewal of the driving license shall be determined by the Cabinet.”

Meanwhile, the Saeima established that no later than before 1 July 2004 the Cabinet of Ministers would adopt regulation established in the above mentioned law.

On 27 April 2004, the Cabinet of Ministers issued Regulation No. 428 “Procedures for the Acquisition of Driver Qualification and Procedures for the Issuance, Change and Renewal of Driving License”. Para 40 of the above mentioned Regulation provided:

“A person shall have the duty to take a theoretical and driving examination to recover driving license if it he or she has been deprived of it for the term of one year or more or the driving license has been dispossessed for having driven a vehicle under the influence of alcohol, narcotic or other intoxicating substances. In case if the driver has a driving license for several categories, he or she shall have the duty to take a theoretical and driving examination pursuant to the higher category. If the higher category is BE, C1E, D1E, CE or DE, driving examination shall be taken by means of B, C1, D1, C or D category vehicle. “

On 15 December 2005, by adopting the Law “Amendments to the Road Traffic Law”, the Saeima established the following wording of Section 22 (1) of the Road Traffic Law:

“A driving license shall be issued for a specific time period. The procedures for the acquisition of driver qualification and the acquisition and renewal of the right to drive a vehicle and the procedures and time periods for the issuance, change and renewal of the driving license shall be determined by the Cabinet.”

On 6 March 2007, the Cabinet of Ministers adopted Regulation No. 173 “Procedures for the Acquisition of Driver Qualification, Procedures for the Acquisition and Renewal of the Right to Drive a Vehicle and Procedures for the Issuance, Change and Renewal of Driving License” (hereinafter – the Regulation No. 173).

Para 40 of the above mentioned Regulation provided:

“If for a person, within the scope of the demerit point system a coercion measure has been applied – prohibition of the use of right to drive vehicles for one year or if driving license is withdrawn for one year or more, or if driving license has been withdrawn for having driven a vehicle under the influence of

alcohol, narcotic or other intoxicating substances, the person shall have the duty to take B category theoretical and driving examination at one of the departments of the CSDD (Road Traffic Safety Directorate) that is authorized to organize such examinations to recover his or her driving license. If the drivers category is A1, A, or B1, the person shall pass theoretical or driving examination in accordance with the category.”

2. The Applicant, the Administrative Case Department of the Senate of the Supreme Court of the Republic of Latvia (hereinafter – the Applicant) asks to assess compliance of the first sentence of Para 40 of the Regulation No. 173 (hereinafter – the Contested Norm) with Article 64 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

According to the Applicant, the Cabinet of Ministers was not authorized by law to issue such regulations that provide taking of theoretical and driving examination for a person to recover one’s driving license in case if it has been withdrawn for one year or more. The Road Traffic Law does not establish such unfavourable consequences for a person.

It has not been established in Section 29 of the Road Traffic Law that in certain cases a person whose right to drive has been revoked for a certain period of time, including the period of one year or more, would have to pass respective theoretical and driving examination to recover one’s driving license. Such regulatory framework has neither been established in Section 22 (2) of the Road Traffic Law that served as the basis for adopting the Regulation No. 173.

By referring to what has been established in legal literature, the Applicant is of the viewpoint that this should not be cabinet regulation that would determine requirements to be fulfilled by a person, but the law that would determine the content of regulations to be adopted and the extent of burden for a person. Consequently, no authorisation is granted in case if the content of such requirements and cases of application thereof is unclear.

According to the Applicant, the authorisation included in Section 22 of the Road Traffic law is unclear.

The regulatory framework that, in certain cases, requires taking of examinations to renew the right to drive a vehicle is, in fact, reasonable and even indispensable.

It follows from the Road Traffic Law that the right to drive a vehicle shall be renewed after expiry of the term of the withdrawal. When adopting the Contested Norm, the Cabinet of Ministers has acted within the frameworks of authorization granted by the legislator – the Contested Norm has been adopted *ultra vires*, namely, observing the authorization included in Section 22 of the Road Traffic Law, as well as in accordance with Section 14 (1) indent 2 and Section 14 (2) of the Rules of Procedure of the Cabinet of Ministers.

3. The institution that adopted the Contested Norm, namely, **the Cabinet of Ministers** does not share the opinion of the Applicant and holds that the Contested Norm does comply with Article 64 of the Satversme and it is not at variance with the authorization included in Section 22 (2) of the Road Traffic Law.

The Cabinet of Ministers informs that the regulatory framework regarding the procedure of renewal the right to drive a vehicle has not been amended since 1999 when the particular issue was regulated by 22 March 1999 Cabinet of Ministers Regulation No. 9 “Provisions regarding Qualification of Drivers of Mechanical Vehicles (apart from Tractor Vehicles)”. The above mentioned regulations were issued in accordance with Section 22 (3) of the Road Traffic Law when regulatory framework regarding renewal of the right to drive a vehicle and that of a driving licence did not exist.

15 December 2005 amendments to Section 22 of the Road Traffic Law have supplemented the particular legal norm by substantiation of the content of the Contested Norm. Taking into account changes into terminology, the Regulation No. 173 was adopted because such is a requirement of legal approach when elaborating normative acts.

The Contested Norm does not commit a person to non-proportional duties; it neither restricts the rights of a person already granted by the Road Traffic Law. The Road Traffic Law provides a list of cases when a person is revoked of the right to drive a vehicle, as well as it includes authorization to the Cabinet of Ministers to establish procedure according to which the right to drive a vehicle would be renewed.

The authorization established by the Road Traffic Law, namely, the authorization to the Cabinet of Ministers to determine the procedure, according to which driving licence would be renewed, fulfils one of the purposes of the Road Traffic Law, i.e. protection of human life and health, the environment, as well as property owned by natural and legal persons.

A driver of a vehicle who has been revoked of the right to drive a vehicle for an extended period of time loses practical and theoretical skills necessary for participation in the road traffic. Moreover, in case if a driver of a vehicle is revoked of the right to drive a vehicle, it can be presumed that such a person might put to risk other participants of the road traffic since the first has not been properly prepared for participating in the road traffic. Consequently, the procedure of renewal of the right to drive a vehicle does comply with the principle of proportionality in case if restriction of the rights established to a person is no greater than the benefit gained by the society. It should be taken into account that the right to drive a vehicle is a special right, and any vehicle is a source of high dangerousness.

The Cabinet of Ministers tasks to assess whether, based on Section 29 (1) indent 2 of the Constitutional Court Law, it is feasible to terminate proceedings in the present case since the Contested Norm has lost its effect as from 1 January 2010.

4. The summoned person – the National Economic, Agricultural, Environmental and Regional Policy Committee of the Saeima [Parliament] indicates that the legislator determines the main features of the authorization rather establishes all nuances that could be included in Cabinet of Ministers regulations.

The authorization to the Cabinet of Ministers to determine the procedure for obtaining and renewing the right to drive a vehicle, as well as the procedure and term for the issuance, change and renewal of driving license has been granted pursuant to the purpose established in Section 2 of the Road Traffic Law. The authorization must be fulfilled taking into account regulatory framework included in other norms of the law.

There is no reason to consider that the authorization included in the Law, namely, the authorization to the Cabinet of Ministers to issue regulations, would have been fulfilled at variance with the will of the legislator and that the Contested Norm would have been adopted breaching the authorization granted by the legislator.

The particular summoned person indicated that the Cabinet of Ministers is not prohibited to regulate such issue that has not been discussed and considered by the legislator. Moreover, the Contested Norm does not contain such regulatory framework of legal relations that the legislator would not have established or has not wanted to establish when granting the authorization to the Cabinet of Ministers.

5. The summoned person, **the Ministry of Traffic** indicates that the content of Section 22 (2) of the Road Traffic Law clearly establishes the following: The Cabinet of Ministers is committed to regulating legal relations regarding renewal of the right to drive a vehicle and issuance, change or renewal of driving licence.

When granting the authority to the Cabinet of Ministers to issue regulations, the legislator has not provided for a detailed procedure and terms, according to which the right to drive a vehicle should be renewed; it has assigned the particular task to the Cabinet of Ministers. The Contested Norm, evaluated in conjunction with other norms of the Regulation No. 173, does comply with the authority granted by the legislator.

By issuing the Regulation No. 173, the authority granted by the legislator is exercised, as well as requirements following from Council Directive 91/439/EEC of 29 June 1991 on driving licences (hereinafter – the Directive 91/439/EEC). It has been established in the above mentioned directive that road traffic safety requires that drivers must be able to demonstrate knowledge and sound understanding in the field of road traffic. This requirement has been transposed to a national normative act by means of the Contested Norm. Moreover, Section 5 of Annex III of the Directive 91/439/EEC assumes that the standards set by Member States for the issue or any subsequent renewal of driving licenses may be stricter than those set out in the Directive.

Administrative violations of road traffic, for which punishments are applied, this punishment being revocation of the right to drive a vehicle, endangers road traffic safety at a considerable extent

The particular summoned person holds that the Cabinet of Ministers has issued such legal norm that commits a person to certain duties based on the content and extent of the authorization granted by law.

The Findings

6. The Cabinet of Ministers holds that proceedings in the particular case should be terminated because the Contested Norm has lost its effect.

In order to adopt decision regarding termination of proceedings it is not sufficient only to conclude that that Article 29 (1) indent 2 of the Constitutional Court Law can be applied. The Law grants the Court the right to terminate legal proceedings rather than the duty to do it. The Constitutional Court has to assess whether there exist such considerations that require continuing legal proceedings in the present case.

The present case has been initiated based on an application of a court. It has been indicated in the application that the Contested Norm would be applied when adjudicating an administrative case, and the court also provides legal substantiation for the fact that the contested norm would play the decisive role in the case to be adjudicated by it (*see: Case materials, Vol. 1, pp. 4*).

Pursuant to Article 19.¹ (1) indent 2 of the Constitutional Court Law and Section 104 (2) of the Administrative Procedure Law (hereinafter – the APL), when adjudicating an administrative case, if an administrative court acknowledges that a norm of law does not conform to the Satversme or if norms to be applied in a particular case fail to comply with legal norms of a higher legal power, it shall suspend court proceedings in the matter and send a substantiated application to the Constitutional Court.

Section 104 (3) of the APL provides among the rest: If a court acknowledges that the binding regulations of a local government do not conform to Cabinet regulations or the law or Cabinet regulations do not conform to the law, it shall not apply the relevant legal norm. The court shall substantiate its view regarding non-conformity with the norms of law of higher legal force in the decision or judgment.

The Applicant holds that, in the present case, it is important to establish whether the Contested Norm has been adopted pursuant to the authorization granted by the Saeima.

External normative acts can be issued only observing the Satversme and general principles of law. Division of competencies of the State institutions of the three powers, which realize the power and create the system of “balance and counterbalance”, has been embodied in the norms of the Satversme institutional part. This principle ensures mutual control of public branches in order to prevent power usurpation and facilitate balance and moderateness of power (*see: Judgment of 1 October 1999 by the Constitutional Court in the case No. 03-05(99), Para 1 of the Concluding Part, Judgment of 20 December 2006 in the case No. 2006-12-01, Para 6.2, and Judgment of 9 October 2007 in the case No. 2007-04-03, Para 12*).

The Constitutional Court has reiterated that observance of the procedures of adoption of norms is a precondition for validity of a legal norm (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 10.4, and Judgment of 23 September 2008 in the case No. 2008-01-03, Para 14*). However, compliance of such a norm with legal norms of a higher legal power serves as a precondition for application of the first.

Consequently, the Constitutional Court has the duty to assess whether the legislator has authorized the legislative power to decide an issue falling within the scope of competence of the first by thus acting at variance with the principle of separation of powers. Taking into account the aforesaid, legal proceedings in the present case shall be proceeded.

7. The Applicant holds that, in the present case, it is necessary to establish whether the Cabinet of Ministers had the stipulated authorization to

issue such regulations that provide that a person has to take a theoretical and practical examination in order to recover one's right to drive a vehicle in case if he or she has been revoked of the particular right for the period of one year or more.

In order to assess whether the Cabinet of Ministers has or has not exceeded the scope of authorization granted by the legislator, it is necessary to establish the content of the Contested Norm, as well as that of the authorization.

8. The Regulation No. 173 regulates procedure, according to which driving qualification would be obtained, examinations would be passed in order to obtain driving qualification, driving licence and a learner's driving licences would be issued, changed or renewed.

Para 37 of the Regulation No. 173 provides that renewal of a driving licence is issuing of a driving licence replacing the lost, stolen or destroyed ones, or renewing of a driving licence in case if a person has been revoked of the right to drive a vehicle.

It follows from the Regulation No. 173 that in cases when a person is revoked of the right to drive a vehicle, his or her driving licence is also withdrawn. The right to drive a vehicle can be renewed according to the procedure established in the Regulation No.173, namely, by passing a respective theoretical and driving examination.

The Constitutional Court has already indicated that decisions taken by the government should be based on the principle of justice and other general legal principles, as well as all actions taken by the legislator should be compliant with law (*See, e.g.: Judgment of 24 March 2000 by the*

Constitutional Court in the case No. 04-07(99), Para 3 of the Concluding Part).

In order to assess whether the Cabinet of Ministers, when adopting the Contested Norm, has or has not acted *ultra vires*, namely, whether it has or has not breached the authorization included in Section 22 (2) of the Road Traffic Law, it is necessary to establish the content granted by the legislator.

9. Section 3 (1) of the Road Traffic Law provides that the legal ground of road traffic shall be this Law and other laws, Road Traffic Regulations and other regulatory enactments of the Cabinet, State standards, as well as international agreements, to which Latvia is a member state.

The Road Traffic Law establishes general requirements for obtaining the right to drive a vehicle. The right to drive a vehicle allows a particular person to drive a vehicle of respective category, transport passengers and cargos, individually train other persons to drive a vehicle, as well as perform other actions, when participating in the road traffic, as established in normative acts. The right of a person to drive a vehicle is manifested by a respective entry in the State registry of vehicles and drivers, as well as a valid driving licence.

The second sentence of Section 22 (2) of the Road Traffic Law provides that “the procedures for the acquisition and renewal of the right to drive a vehicle and the procedures and time periods for the issuance, change and renewal of the driving license shall be determined by the Cabinet”.

The Constitutional Court has already indicated that content of legal norms shall be established by applying methods of interpretation of legal norms (*see: Judgment of 22 February 2002 by the Constitutional Court in the case No. 2001-06-03, Para 6, and Judgment of 4 February 2003 in the case No. 2002-06-01, Para 3 of the Concluding Part*). Interpretation of legal norms

means establishing of the content of a legal norm by first of all finding out the meaning of words used therein. Namely, words selected by the legislator determine what kind of regulatory framework the Cabinet of Ministers should elaborate.

The term “qualification” in the general meaning shall be understood as readiness for execution of a particular work, recognition of someone as compliant with certain requirements, which is usually accompanied by granting respective right.

Consequently, the Cabinet of Ministers is committed to establishing procedure, according to which a person shall testify its theoretical knowledge and practical skills in the field of road traffic.

The following follows from the Road Traffic Law: if a person obtains driver’s qualification, he or she can be granted the right to drive a vehicle, which is proven by driving licence issued.

The words used in the second sentence of Section 22 (2) of the Road Traffic Law “the procedures for the renewal of the right to drive a vehicle” specify that, on the one hand, in certain cases a person can be prohibited to drive a vehicle, and, on the other one, a person can be denied the right to drive a vehicle. In section 30 of the Road Traffic Law, the legislator has clearly established cases when a person is prohibited to drive a vehicle, whilst Section 29 of the same law provides a list of cases when a person is revoked of the right to drive a vehicle. Likewise, Section 25 (4) of the Road Traffic Law establishes: If a driving license has been revoked, a driving license shall be considered as invalid.

If a person who has been revoked of the right to drive a vehicle for a certain period of time, has failed to perform stipulated actions before the expiry of a particular term in order to recover the right, it shall be regarded that a person is still revoked of the particular right (*see: Judgment of 8 October 2007*

by the Administrative Case Department of the Senate of the Supreme Court of the Republic of Latvia in the case No. SKA-400/2007).

Consequently, revocation of the right to drive a vehicle means that skills of a person to drive a vehicle cannot be regarded as compliant with the qualification necessary for participating in the road traffic. The following follows from the law: in order to obtain the right to drive a vehicle and receive a driving license, it is necessary to prove one's theoretical and practical knowledge by taking an examination.

The Constitutional Court has already indicated that the term "procedures" clearly indicates the procedural nature of regulations of the Cabinet of Ministers, namely, elaboration of a certain procedure (*see, e.g.: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 20*).

Grammatical interpretation method is only the first method of interpretation, and it is not correct to consider only the literary meaning of a legal norm. When interpreting a legal norm by applying the grammatical interpretation method, the obtained result is not final, and it is probable that the result is not confirmed after having applied other interpretation methods (*see: Judgment of 22 April 2005 by the Constitutional Court in the case No. 2004-25-03, Para 6*).

In order to find out whether the law has authorized the Cabinet of Ministers to adopt such legal norm that requires passing of a particular examination for a person to recover one's right to drive a vehicle, it is necessary to establish the purpose and scope of the authorization.

9.1. The Constitutional Court has already indicated the following: What the legislator has aimed at when conferring rights to the Cabinet of Ministers to regulate the respective issue is understood as the objective of the authorization

(see: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 19).

The core of the authorization follows from Section 2 of the Road Traffic Law. Namely, the legislator has elaborated the particular law in order to prescribe the organizational and legal basis for road traffic procedures and road traffic safety in Latvia, in order to protect human life and health, the environment, as well as property owned by natural and legal persons.

Consequently, the regulatory framework elaborated by the Cabinet of Ministers based on the Road Traffic Law should reach the same aim that the legislator wanted to reach when adopting the above mentioned law.

The National Economic, Agricultural, Environmental and Regional Policy Committee of the Saeima also stresses the close link between the Regulation no. 173 and the aim established in the Road Traffic law.

9.2. In order to reach the aim established in the Road Traffic Law, the legislator has established that one of the measures of impacting behaviour of vehicle drivers is revocation of the right to drive a vehicle.

Section 29 (2) of the Road Traffic Law provides that revocation of the right to drive a vehicle is a penalty regarding substantial offences of road traffic. Such penalty is included both, in the Administrative Violations Code and the Criminal Law.

Hazard and dangerousness of an offence threatening road traffic is manifested by the fact that a person dealing with the source of high dangerousness fails to observe stipulated road traffic provisions or terms of use of a vehicle, which results in threat to life and health of other persons (*see: Hamkova D. Kāda ir kriminālatbildība par satiksmes noteikumu pārkāpšanu // Jurista Vārds, 24 February 2004, No. 7).*

Non-observance of road traffic regulations or terms of use of vehicles does not as such threaten participants of the road traffic. Pursuant to Section 19 (4) the Road Traffic Law, Each participant in road traffic has the right to consider, that other persons also fulfill the requirements specified in the Road Traffic Law. Consequently, the legislator has established that it is necessary to establish requirements for obtaining and exercising the right to drive a vehicle since such regulatory framework is necessary for the sake of public safety.

9.3. Regulation No. 173 contains norms that follow from the Directive 91/439/EEC. This Directive establishes coordination of standards regarding examination of vehicle drivers and issuance of a driving licence in the frameworks of the European Union. Section 7 (1) indent “a” of the Directive 91/439/EEC provides that a driving licences shall, moreover, be issued only to those applicants who have passed a test of skills and behaviour and a theoretical test and who meet medical standards.

It has been emphasized in the preamble of Annex II of the Directive 91/439/EEC that, to drive safely, drivers of all power-driven vehicles must have the knowledge, skill and behaviour to be able to have sufficient command of their vehicle not to create dangerous situations and to react appropriately should such situations occur.

Meanwhile, Para 2 of Annex II describes the role of knowledge of a driver regarding issues of road traffic safety and understanding thereof; however, Para 3 thereof establishes the obligatory minimum of skills that a person should testify.

In order to increase road traffic safety, the Member States of the European Union can in certain cases apply its own legal norms regarding deprivation, cessation and annulment of a driving licence pursuant to Section 8 (2) and (4) of the Directive 91/439/EEC (*see, e.g.: 19 February 2009 judgment*

of the European Court of Justice in the case No. C-321/07, ECR pp. 113, Para 90).

Consequently, it can be concluded that revocation of the right to drive a vehicle has been established with the purpose to reach the legitimate aim of Article 116 of the Satversme, which is ensuring of public safety.

10. The Constitutional Court has already established that the limits of the authorization mean the limits, at which the Cabinet of Ministers may act when elaborating and issuing legal norms (*see: Judgment of 23 September 2008 by the Constitutional Court in the case No. 2008-01-03, Para 17*).

Pursuant to Article 64 of the Satversme, the Saeima, as well as the people shall have the right to legislate pursuant to the procedure and extent established in the Satversme.

The Constitutional Court has already concluded that the requirement that the legislator itself shall regulate all issues of the State is hard to implement in complicated life conditions of modern society. In order to ensure an effective implementation of State power, it is possible to deviate from the requirement that the legislator itself must regulate all issues. Such efficiency is reached when the legislator in the process of lawmaking regulates all most important issues, but elaboration of more detailed legal norms is delegated to the Cabinet of Ministers or other State organ (*see: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 15*).

The executive power falls within the competence of the Cabinet of Ministers, also in case if it is necessary to adopt an external normative act when the legislator has particularly authorized an executive power institution. The Cabinet of Ministers or any other institution can be committed to elaborating of the procedures for implementing of a law in order to develop on the political

will included in the law or establish the procedure for implementing of the law. Such normative acts cannot include norms that cannot be regarded as aids for implementation of a particular legal norm (*see: Judgment of 3 April 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 5 of the Concluding Part, Judgment of 16 October 2006 in the case No. 2006-05-01, Para 10.4, and Judgment of 9 October 2007 in the case No. 2007-04-03, Para 14*).

The term that the law must contain a direct authorization to issue provisions, as well as main guidelines for elaboration of the provisions, follows from the requirement that it should be the legislator who decides the most important issues of social life (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 10*).

10.1. The Cabinet of Ministers does not have the right to issue provisions regarding issues falling within the scope of competence of the legislator. Regulation of such substantial and important social and public issues should be performed by the legislator itself (*see: Judgment of 1 October 1999 by the Constitutional Court in the case No. 03-05(99), Para 1 of the Concluding Part, Judgment of 21 November 2005 in the case No. 2005-03-0306, Para 7, Judgment of 21 December 2009 in the case No. 2009-43-01, Para 31.1, and Judgment of 21 December 2010 in the case No. 2010-44-01, Para 11*). After having assessed importance of an issue under consideration and its relation with the fundamental rights, the legislator has to decide on the extent, to which it is necessary to regulate it by law.

Pursuant to the principle of supreme command of the parliament, the Saeima solves a particular issue by means of legislation having a knock-on effect; whilst the Cabinet of Ministers deals with the particular issue in details by adopting particular regulations (*see: State President Committee on the Constitutional Rights: opinion of 18 January 2010 / 2010. gada 18. janvāra*

viedoklis „Par Saeimas apstiprinājuma nepieciešamību liela apjoma aizņēmumu saņemšanai”// Latvijas Vēstnesis, 20 January 2010, No. 10).

The Constitutional Court has emphasized that a legal norms, by means of which the legislator authorizes the Cabinet of Ministers to regulate the procedures for exercising the fundamental rights of a person established in the Satversme or to establish restrictions of such exercise of rights, should be clear and precise. It is not admissible to restrict the rights of a person by referring to an unclear or ambiguous authorization of the legislator. If authorization of a legislator causes doubt, the Cabinet of Ministers shall have the duty to fulfil a particular authorization by avoiding restriction of the fundamental rights of a person as far as possible (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 10*).

10.2. In order to fully and objectively establish the content of certain norms of the Satversme, they shall be interpreted in conjunction with other norms of the Satversme. The principle of unity of the Satversme is based on the assumption that the Satversme is a single aggregate body (*see: Judgment of 27 June 2003 by the Constitutional Court in the case No. 2003-04-01, Para 1.1 of the Concluding Part*). As to this aspect, it is necessary to take into account the fact that the content of the Satversme is formed also by the general legal principles.

Latvia is a parliamentary republic; therefore the government is accountable to the Saeima for its actions pursuant to Article 59 of the Satversme. The above mentioned norm of the Satversme includes both, parliamentary control and political responsibility of the government before the parliament (*see: Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga, 2004, pp. 101 – 108*).

The authorization by the legislator to the cabinet of Ministers, namely, the authorization to adopt external normative acts, should preserve relations of

mutual control and balance, as well as comply with other principles of a law-governed State (*see: Judgment of 1 October 1999 by the Constitutional Court in the case No. 03-05(99), Para 1 of the Concluding Part*).

When authorizing the legislator to regulate any issue, the legislator cannot cause risk that the balance between the legislative power and the executive power might tilt to the side of the executive power so far that the principle of separation of powers and the essence of a democratic state regime along with it would be endangered.

10.3. First of all it is the legislator who is responsible for compliance of the authorization with norms of a higher legal force.

Section 22 of the Road Traffic Law that includes the authorization to the Cabinet of Ministers to elaborate the procedure for obtaining and renewing the right to drive a vehicle has been amended several times already (*see: draft laws No.46 /Lp9, No. 793/Lp9 and No. 1648/Lp9 <http://titania.saeima.lv>, consulted on 4 April 2009, as well as Latvijas Vēstnesis, 1 March 2007, No. 36; 4 April 2009, No. 35, and 1 June 2010, N. 86*). The legislator has not changed the essence of the authorization. Consequently, it can be concluded that there have been no doubt regarding the fact that the Cabinet of Ministers has adopted the Contested Norm pursuant to the authorization.

The National Economic, Agricultural, Environmental and Regional Policy Committee of the Saeima, which is the committee responsible for the above mentioned draft laws, holds that the Cabinet of Ministers has executed the authorization in accordance with the will of the legislator and the Contested Norm has been adopted within the frameworks of the authorization granted by the legislator (*see: Case materials, Vol. 2, pp. 12 – 13*).

The opinion that the stipulated authorization has been executed in accordance with the will of the legislator does not mean that the fact complies with legal norms of a higher legal force.

By mediation of parliamentary control or other legal remedies at the disposal of the legislator, the latter has to ensure that the authorization is executed in accordance with the Satversme, as well as considerations of usefulness and reasonability.

10.4. The Constitutional Court has already indicated that regulations of the Cabinet of Ministers passed on the base of a special delegation form the part of normative acts that has emerged not in the way of elaboration of laws but in that of execution thereof. The content of such regulations are mainly formed by procedural norms that function as an instrument of exercising of rights already established in a law. In separate cases, the content of regulations of the Cabinet of Ministers can be formed by material norms, however these must be passed based on a special authorization by the legislator (*see: Judgment of 9 October 2007 by the Constitutional Court in the case No. 2007-04-03, Para 16*).

The legislator has included, in the Road Traffic Law, several authorizations to the Cabinet of Ministers to elaborate provisions. For instance, Section 16 (7) of the Road Traffic Law establishes that the procedures, by which the periodic technical inspection of vehicles and the technical road side inspection of vehicles are performed, shall be determined by the Cabinet. The requirements in respect of the technical condition of vehicles and equipment, as well as the evaluation criteria for the fulfillment of these regulations shall be determined by the Cabinet of Ministers. The legislator has authorized the Cabinet of Ministers to establish, in which cases and according to what procedure a driver of a vehicle shall be committed to pass a pre-term health examination. The Cabinet of Ministers shall also determine qualification requirements for specialists, requirements for training institutions that train vehicle drivers, as well as elaborate programs for training vehicle drivers. The legislator has authorized the Cabinet of Ministers also to establish the procedures of road traffic in Latvia by adopting Road Traffic Regulations.

When establishing the extent of the authorization granted by the legislator, it is necessary to take into account the specific character of the field, regulation of which was commissioned to the Cabinet of Ministers by the legislator. In the field of road traffic, it is necessary to regulate many issues of technical nature pursuant to the level of development of infrastructure and needs of the society. Consequently, the authorization of the legislator in this field can be expressed in a general manner.

Authorization by the legislator shall be understood by the executive power not only as a particular and brief legal norm, but also as the essence and the purpose of the law.

11. There are no doubt that a person that has committed a grave violation of road traffic provisions, which has resulted in revocation of the right to drive a vehicle, cannot be regarded as a high qualified vehicle driver. Likewise, it is necessary to take into account the fact that skills of a vehicle diver deteriorate in case if the right to drive a vehicle has been revoked for a considerable period. In such case, a person shall have the duty to prove one's theoretical knowledge and practical skills by passing all examinations necessary for obtaining the qualification of a vehicle driver in order to prove that he or she would no more threaten traffic safety.

Although the purpose of the law is not to regulate all issues in detail, the legislator still has to consider the particular issues.

The legislator has established the purpose of the Road Traffic Law clearly enough, whilst it has commissioned elaboration of the procedures for obtaining the qualification of a vehicle driver to the Cabinet of Ministers. Consequently, a person who has been revoked the right to drive a vehicle shall have to take respective examinations once more in order to prove his or her qualification.

The Constitutional Court concludes that, when adopting the Contested Norm, the Cabinet of Ministers has not infringed the authorization granted by the legislator, and it has acted within the frameworks of the particular authorization.

Consequently, the Contested Norm complies with Article 64 of the Satversme.

The Constitutional Court

based on Article 30-32 of the Constitutional Court Law,

h o l d s:

the First Sentence of Section 40 of March 2007 Cabinet of Ministers Regulation No. 173 “Procedures for the Acquisition of Driver Qualification, Procedures for the Acquisition and Renewal of the Right to Drive a Vehicle and Procedures for the Issuance, Change and Renewal of Driving License” does comply with Article 64 of the Satversme of the Republic of Latvia

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing of it.

Presiding Judge

G. Kūtris