



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, September 23, 2008

in Case No. 2008-01-03

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, Justices Juris Jelāgins, Aija Branta, Kristīne Krūma and Viktors Skudra,

based on Article 85 of the Satversme (Constitution) of the Republic of Latvia and Item 3 of Article 16, Item 5 of the first part of Article 17 and Article 28.¹ of the Constitutional Court Law,

having regard to the constitutional claim of the Prosecutor General of the Republic of Latvia Jānis Maizītis,

on August 26, 2008 in the court session examined the case in written proceedings

“On Compliance of the Financial Assistance Quotas for Production of Biofuel

7813953 Litres – for the Farmers Co-operative “Latraps” (LV58503007191) and 3255814 Litres for the Joint-Stock Company “Baltic Holding Company” (LV40003558603) Established in Para 4 of the Regulation No. 312 of May 8, 2007 by the Cabinet of Ministers “Amendments to the Regulation No. 712 of September 13, 2005 by the Cabinet of Ministers “On the Procedure for Granting State Assistance for Production of the Necessary Minimum Amount of Biofuel and the Procedure for Setting the Financial Assistance Quotas According to the

Types of Biofuel”” with the First Part of Section 8 of the Biofuel Law and Item 1 of the Fourth Part of Section 8 of the Law “On Excise Duties”

The Constitutional Court has established:

1. On May 1, 2004, the Law “On Excise Duties” came into force. According to Item 1 of the fourth part of Section 8 thereof, production, manufacturing, processing and treatment of excisable goods shall be permitted only in an excise warehouse.

On March 17, 2005, the Saeima (Parliament) adopted the Biofuel Law. The first part of Section 8 thereof provides:

“The State assistance shall be granted for the production of minimum necessary annual amount of biofuel and financial assistance quotas for the types of biofuel shall be specified in accordance with the procedures provided for by the Cabinet.”

On September 13, 2005, the Cabinet of Ministers adopted the Regulation No. 712 “On the Procedure for Granting State Assistance for Production of the Necessary Minimum Amount of Biofuel and the Procedure for Setting the Financial Assistance Quotas According to the Types of Biofuel”” (hereinafter – Regulation No. 712).

On May 8, 2007, the Cabinet of Ministers adopted the Regulation No. 312 “Amendments to the Regulation No. 712 of September 13, 2005 by the Cabinet of Ministers “On the Procedure for Granting State Assistance for Production of the Necessary Minimum Amount of Biofuel and the Procedure for Setting the Financial Assistance Quotas According to the Types of Biofuel”” (hereinafter – Regulation No. 312). Para 4 of these regulations provided for a new wording of Para 2 of the Regulation No. 712, according to which financial assistance quotas for production of biofuel (hereinafter –Quotas) were also granted for the farmers co-operative “Latraps” at the amount of 7 813 953 litres and for the joint-stock company “Baltic Holding Company” at the amount of 3 255 814 litres (hereinafter – the Contested Regulation).

On April 24, 2008, when Cabinet Regulations of April 15, 2008 No. 280 “Regulations Regarding Financial Assistance Quotas for Biofuel” (hereinafter – Regulation No. 280), the Regulation No. 712 became invalid. The farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” are also

mentioned in Appendix III of the Regulation No. 280 “Financial Assistance Quota Granted to Biofuel Producers”.

2. The Applicant – the Prosecutor General asks to recognize the Contested Regulation as non-compliant with the first part of Section 8 of the Biofuel Law and Item 1 of the fourth part of Section 8 of the Law “On Excise Duties”.

It has been indicated in the application that the regulations of the Cabinet of Ministers with the attachments thereof shall be regarded as a normative act. Receivers of quotas – the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” – do not comply with the status of biofuel producer in Latvia; therefore the Contested Regulation shall be regarded as invalid as from the date of adopting of it.

2.1. The Applicant indicates that the first part of Article 8 of the Biofuel Law includes an authorizing norm regarding the Cabinet of Ministers; therefore it is necessary to establish the objective, content and scope of this authorization.

The first part of Section 8 of the Biofuel Law deals with a State-provided assistance for biofuel production rather than circulation thereof. It is also provided in Para 6 of the Regulation No. 712 that a producer of biofuel only can claim the Quota, as well as it establishes the criteria that the producer must comply with.

The Applicant holds that “according to the effective normative acts, a biofuel producer is a merchant registered in the Commercial Register that produces biodiesel in an excise warehouse and has been issued a special permit (licence) for the activities of the warehouse-keeper”.

2.2. It has been indicated in the application that it is provided in Para 13 of the Cabinet Regulation of October 18, 2005 No. 772 “Regulations Regarding Requirements for Biofuel Quality, Conformity Assessment, Market Supervision and Procedures for Consumer Information” that biofuel shall be produced in accordance with the Law “On Excise Duties” and normative acts regarding procedures for the circulation of excisable goods. Whilst, it has been provided in Para 14 of the Cabinet Regulation of August 30, 2005 No. 662 “Procedures for the Circulation of Excisable Goods” that a special permit (licence) for business activities with excisable goods, as

well as for the activities of the warehouse-keeper shall be issued by a licensing commission for merchants registered in the Commercial Register.

The Applicant indicates that the farmers co-operative “Latraps” is not a merchant registered in the Commercial Register. Neither the farmers co-operative “Latraps”, nor the joint-stock company “Baltic Holding Company” has been issued a special permit (licence) for the activities of an excise warehouse-keeper at the moment of adoption of the Contested Regulation. Both legal persons have only planned biofuel production, besides, outside Latvia.

2.3. The Applicant holds that the Cabinet of Ministers, when including the two societies, which do not comply with the status of a biofuel producer, into Appendix II of the Regulation No. 712, has granted the Quota for biofuel production exceeding the scope of the authorisation provided for in the Law; therefore the Contested Regulation shall be regarded as non-compliant with legal norms of higher legal force. The main condition for claiming the State assistance is the fact that the claimant is regarded as a biofuel producer according to normative acts effective in the Republic of Latvia, rather than the fact whether the claimant complies with the criteria set forth in Para 6 of the Regulation No. 712. Otherwise there is no reason for granting the Quota and the subsequent granting of direct assistance.

The Applicant does not agree with the viewpoint of the Cabinet of Ministers that if a biofuel producer who has been granted the Quota, does not fulfil the requirements of normative acts wherewith it does not receive the State assistance, no harm is done to the State. The Applicant holds that thus other biofuel producers who have the possibility to produce biofuel in Latvia are denied the possibility to be granted the Quota. By producing biofuel in Latvia, new work places are created and transport expenses are reduced, moreover, a part of the State assistance is returned to the State in the form of taxes. Therefore the State should support local, not foreign production units.

2.4. The Applicant indicates in the additional explanations to the Constitutional Court that the contested but invalid regulation has caused permanent consequences for certain legal subjects during its validity; therefore the Applicant asks the Constitutional Court to continue the proceedings. By granting Quotas for the

societies that have no legal rights to it, the amount of the Quotas for those merchants that work in this field according to effective legal norms is reduced.

The Applicant indicates that the regulation established in Appendix II of the Regulation No. 712 has served as the basis for re-inclusion of the two societies into Para 4 and 5 of Appendix III of the Regulation No. 280 with Quotas established beforehand. The issue regarding granting the Quota in accordance with the new provision has not been discussed. Reestablishment of lawfulness is possible only by recognizing the Contested Regulations as invalid as from the date of adopting thereof. However, amendments to the new regulations can be made based on a positive decision of the Constitutional Court.

3. The institution that passed the contested act – **the Cabinet of Ministers**, in its reply, asks the Constitutional Court to recognize the application as ungrounded, and the Contested Regulation as compliant with the first part of Section 8 of the Biofuel Law and Item 1 of the fourth part of Section 8 of the Law “On Excise Duties”.

3.1. The Cabinet of Ministers indicate that the Biofuel Law was elaborated in order to introduce the Directive 2003/30/EC of the European Parliament and of the Council of May 8, 2003. Moreover, the Member States were provided an option to provide or not to provide the State assistance to favour circulation of biofuel within the territory of the European Union. It has been emphasized in the reply that conditions of the State assistance for biofuel production established in the Regulation No. 712 are co-ordinated with the European Commission that, in the decision of May 8, 2006, has recognized them as non-compliant with the Treaty Establishing the European Community.

3.2. It has been indicated in the reply that the notion “biofuel producer” mentioned in the Regulation No. 712 can not be interpreted grammatically since this method of interpretation narrows the meaning of the notion “circulation of biofuel” used in the Biofuel Law, as well as the objective of the Law itself. Since the objective of the Biofuel Law is to favour the circulation of biofuel, it must be concluded from the first part of Section 8 thereof that the State shall provide the assistance not for production of minimum necessary annual amount of biofuel in the State, as it has been

concluded in the application, but for production of minimum necessary amount of biofuel in order to ensure the circulation of biofuel in the State.

It has been mentioned in the reply that the objective of the State support is a substantial condition for stimulation of biofuel production and thus for favouring of consumption of such fuel. The Quotas are established in accordance with the programme “Biofuel Production and Consumption in Latvia for 2003 – 2010” that was confirmed by the Decree No. 800 of the Cabinet of Ministers of December 19, 2003. Free quota in 2007 was 14 000 000 litres, and three biofuel producers applied for it, including the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company”. Compliance of the applicants with the criteria established in Para 6 of the Regulation No. 712 was assessed by the Commission for Granting Financial Assistance Quotas for Biofuel during the meeting of March 12, 2007. The Commission was formed by the Decree No. 207 of the Minister of Agriculture of October 20, 2005. The Commission has recognized that it is possible to grant Quotas to the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company”.

3.3. The Cabinet of Ministers indicates that the criteria mentioned in Para 6 of the Regulation No. 712 do not include the condition that the applicant for the Quota must at first receive a permit (licence) for activities with excisable goods. The Commission for Granting Financial Assistance Quotas for Biofuel has never requested that the applicant must necessarily have the permit (licence) for activities with excisable goods. For instance, on March 13, 2006, the Commission has made the decision to approve granting of the Quota to the limited liability company “Mamas D”, however the abovementioned company has received the special permit (licence) for activities with excisable goods only on March 31, 2006. Based on the principle of legal equality, such a requirement was neither set for the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company”.

The Cabinet of Ministers holds that the provisions of the normative acts were explicit and comprehensible enough so that a person involved in the circulation of biofuel would know his or her rights and obligation, namely, also the fact that the duty of a person involved in the circulation of biofuel is to receive the special permit (licence). Thus, “ensuring of the compliance with the legal regulation of production of

excisable goods is the duty of the Quota owner”. Moreover, funding not granted to producers can not be regarded as harm for the State.

3.4. The Cabinet of Ministers indicates that there no grounds for the abovementioned statement that the Quota shall only be granted to merchants registered in the Commercial Register. Para 195 of the Cabinet of Ministers Regulation of August 30, 2005 No. 662 “Procedures of the Circulation of Excisable Goods” provides that the abovementioned “regulation is related also to enterprises (business entities) that work in the field of the circulation of excisable goods”. The farmers co-operative “Latraps” is registered in the Enterprise Register. In the sense of the normative acts regulating the circulation of excisable goods, the farmers co-operative “Latraps” is regarded as a merchant.

3.5. The Cabinet of Ministers holds that the joint-stock company “Baltic Holding Company” is not only a supplier of raw materials for the German producer of biofuel and fulfils the function of an intermediary for importing of biofuel into the Republic of Latvia. According to the agreement of December 14, 2006, this joint-stock company is regarded as a branch enterprise of “European Oil Products Biodiesel AG” in Latvia, which deals with pre-processing and processing of rape into oil. Thus it can be regarded as a biofuel producer.

3.6. It has been emphasized in the reply that, by recognizing the Contested Regulation as invalid, no shortcomings identified in the normative acts would be eliminated and the principle of legal security would be breached. The farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” would have the reason to address court bringing an action against the State. According to the principle *in dubio pro civi* (all doubt in favour of a man) of the Administrative Procedure Law, burden of proof should, as far as possible, be bore by officials, and in the case of doubt the solution should be made in favour of a person.

4. The Ministry of Economy indicates that, in Latvia, biodiesel and bioethanol is produced, whereas pure vegetable oil is produced mainly as raw material for biodiesel production. In Latvia, there exist five producers of biodiesel, one producer of bioethanol and four producers of pure vegetable oil, including the joint-stock company “Baltic Holding Company”. The Ministry of Economy has no data at

its disposition regarding the amount of biodiesel produced by the farmers co-operative “Latraps”.

According to the prognosis included in the programme “Biofuel Production and Consumption in Latvia for 2003 – 2010”, in 2007 the proportion of biofuel in the fuel market should have been 3.5 percent. The Ministry of Economy has information at its disposition that the capacity of the producers of biodiesel was sufficient in order to produce the necessary amount of biodiesel in 2007, however, according to the information provided by the Ministry of Finance, in Latvia there were 10 149 000 litres of biodiesel produced in 2007, which constitutes only 40.6 percent out of the necessary minimum amount of biodiesel in 2007.

5. The Ministry of Agriculture informs that the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” have not submitted any information regarding amount of sales of biofuel produced within the framework of the Quota during the previous year of account in the Latvian market as it is provided by Para 13 of the Regulation No. 712. The farmers co-operation “Latraps” has submitted an application to the Rural Support Service to receive the direct State assistance for production of biofuel, however the application was rejected because the State Revenue Service had no information at its disposition regarding the amount of biofuel produced by “Latraps”. The joint-stock company “Baltic Holding Company” has not submitted any application to the Rural Support Service to receive the direct State assistance.

The Ministry of Agriculture indicates that Para 6 of the Regulation No. 712 does not require from applicants for Quotas to have received a special permit (licence) for the activities with excisable goods. Before that, too, some producers of biofuel were issued the special permits (licences) after granting the Quotas. Para 6 of the Regulation No. 712 neither provides for a precondition that production of biofuel should take place in Latvia only. When deciding on assigning the State assistance, it is neither taken into consideration whether biofuel is distributed in Latvia.

6. The State Revenue Service indicates that the Licensing Commission, on February 21, 2008 (Protocol of the meeting No. 15) has issued a special permit

(licence) for the joint-stock company “Baltic Holding Company” for the activities of an excise warehouse-keeper. Whilst, no such special permit (licence) has been issued for the farmers co-operative “Latraps”. There is information provided electronically. On November 24, 2007, by the Tax Administration of the Kingdom of Denmark at the disposition of the State Revenue Service regarding the fact that the farmers co-operative “Latraps” was registered in the Kingdom of Denmark in 2007 as an excisable goods warehouse-keeper.

7. The Latvian Biofuel Association indicates that violation of the rights for other producers is caused only in the case if producing capacity is higher than the Quota granted. For instance, the Quota of the limited liability company “Mežrozīte” is 6 000 000 litres, and the Quota of the limited liability company “Oniors” is 3 000 000 litres per year, however the producing capacities constitute, respectively, 18 000 000 and 5 000 000 litres. Such situation can be eliminated by means of Quota redistribution, but the Regulation No. 712 does not provide for it. According to the information at the disposition of the Latvian Biofuel Association, not all producers in 2008 who have been granted the Quota would be able to uptake it.

The Latvian Biofuel Association holds that the farmers co-operative “Latraps” does not have the rights to the Quota in 2007 and 2008 because this society, not being a merchant, cannot be issued a special permit (licence) for the activities of a excise warehouse-keeper. Moreover, it does not comply with other requirements of normative acts of Latvia, since it has no biofuel production unit in Latvia. However, the joint-stock company “Baltic Holding Company” has been issued the special permit (licence) for the activities of an excise warehouse-keeper and has informed the Latvian Biofuel Association on the fact that it is planning to produce biodiesel at the amount of the Quota granted up to the end of 2008, therefore the State assistance could be disbursed to this company in 2009.

8. The farmers co-operative “Latraps” indicates that that it is an excise warehouse-keeper registered in the Kingdom of Denmark, and it is considered as such also in other Member States of the European Union, including Latvia. It has not been

issued a special permit (licence) by the competent authority of the Republic of Latvia for the activities of an excise warehouse-keeper, because it was not necessary.

Until now, the farmers co-operative “Latraps” has not received any State assistance at the amount of the Quota granted unit now. In 2007, it has produced 5 895 501 litres of biofuel, 1 528 693 litres (26 percent) out of which have been sold to the limited liability company “Neste Latvija”. Legal norms do not provide for a mandatory requirement to distribute biofuel produced in the frameworks of the Quota in the Latvian market. Even if the produced biofuel is sold to a society registered in Latvia, this does not mean that this biofuel would stay in the Latvian market and reach Latvian consumers.

9. The joint-stock company “Baltic Holding Company” explains that on February 21, 2008 it has been issued a special permit (licence) for the activities of an excise warehouse-keeper. It has not received the State assistance at the amount of the Quota granted because in 2007 it was not producing biofuel.

It has been indicated in the reply that without the State assistance production of biofuel in Latvia has no economic reason. In order to realize the Quota granted and produce the respective amount of biodiesel, the joint-stock company “Baltic Holding Company” has invested into construction of an excise warehouse, as well as it has agreed with the limited liability company “Evija” on oils terminal in Liepāja, where mixing of biodiesel with fossil diesel would be carried out. Mixed diesel with addition of five percent of biodiesel would be sold in the region of Kurzeme. It is planned to initiate production of biodiesel on June or July of 2008.

The joint-stock company “Baltic Holding Company” indicates: if the Quota granted would be recognized as unlawful, the company would not receive the State assistance for already produced biofuel. This would lead to aggravation of financial indices.

The Constitutional Court holds:

10. Article 85 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) provides: “In Latvia, there shall be a Constitutional Court, which, within

its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid.”

The competence of the Constitutional Court is regulated in more details by Article 16 of the Constitutional Court Law. It provides that the Constitutional Court shall review cases regarding compliance of Laws with the Satversme (Item 1) and compliance of other normative acts or their parts with the legal norms of higher legal force (Item 3).

10.1. Regulations of the Cabinet of Ministers is one of those kinds of external normative acts, assessment of compliance of which in accordance with Item 3 of Article 16 of the Constitutional Court Law falls within the scope of competence of the Constitutional Court.

Conditions for adopting regulations of the Cabinet of Ministers are mentioned in Section 31 of the Cabinet of Ministers Structure Law of May 15, 2008. Up to June 30, 2008, this issue was regulated by Section 14 of the Cabinet of Ministers Structure Law of July 15, 1993.

It follows from these norms that the Cabinet of Ministers is authorized to adopt external normative acts – regulations, only in the cases provided for by the Law if it particularly authorizes the Cabinet of Ministers to do it. The main directions of the content of the regulations are provided in the authorization.

However, procedures of issuing legal acts of the Cabinet of Ministers, including regulations of the Cabinet of Ministers, are regulated by the Cabinet of Ministers Regulation of March 12, 2002 No. 111 “Rules of Procedure of the Cabinet of Ministers” (hereinafter – the Rules of Procedure of the Cabinet of Ministers).

10.2. The basic text of regulations of the Cabinet of Ministers is often supplemented by appendices. By means of this legal technique, a more explicit layout of the content of the normative act is achieved.

Procedure of revision of annexes of another normative act – a law, is established by the second part of Section 98 of the Rules of Procedure of the Saeima. It provides that an appendix to a draft law shall be considered in the same manner as a separate article and the Saeima may rule whether the appendix should be considered

before or after the relevant article of the draft law or after all the articles of the draft law have been considered. Adoption of normative acts of the Cabinet of Ministers – regulations – is not regulated in the Rules of Procedure of the Saeima.

Appendices of normative acts, including appendices of normative acts of the Cabinet of Ministers – regulations, are an indispensable part of these acts and have the same legal force if compared with legal norms included in the basic text of the normative act.

Consequently, it falls within the jurisdiction of the Constitutional Court to assess compliance of appendices of normative acts, including appendices of regulations of the Cabinet of Ministers, with legal norms of higher legal force.

11. In the Application, the norm of the Regulation No. 312, wherewith Appendix II of the Regulation No. 712 was supplemented by a regulation regarding granting of the Quota to the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company”. Consequently, in fact, the regulation, wherewith the Quotas were granted for production of biofuel, is contested. To ensure that it is reasonable to assess compliance of this regulation with legal norms of higher legal force, it is necessary to establish that the contested regulation is of a normative nature, namely, that it is a legal norm.

It is generally established in legal theory that a legal norm is an abstract and mandatory prescript of behaviour of the society. A legal norm regulates not only one particular case, but certain situations defined in an abstract way and it can be repeatedly applied (*see, e.g.: Neimanis J. Ievads tiesībās. – Rīga: Zv. adv. J. Neimanis, 2004, pp 45*).

Para 3.1 of the Regulation No. 712 provides that the Quota up to December 31, 2011 at the amount of 7 813 953 litres shall be granted to the farmers co-operative “Latraps” and at the amount of 3 255 814 litres to the joint-stock company “Baltic Holding Company”. The analysis of the contested regulation shows that it does not possess any feature characteristic for a legal norm. The abovementioned prescription is not abstract, mandatory and it cannot be applied repeatedly. It is concrete, addressed to certain persons and can not be applied repeatedly.

Consequently, the Contested Regulation has no normative nature, namely, it shall not be regarded as a legal norm.

12. On July 15, 1993, it was provided in Section 15.¹ of the Rules of Procedure of the Cabinet of Ministers that the Prime Minister, assistants of the Prime Minister and ministers are authorized to issue order in the cases provided for in laws and regulations of the Cabinet of Ministers. In the Rules of Procedure of the Cabinet of Ministers, there was nothing mentioned about the rights of the Cabinet of Ministers to issue orders. The Constitutional Court, when systematically interpreting this norm conjointly with Article 55 of the Satversme and the fourth part of Section 6 of the Law on “The Procedure by Which Laws and Other Acts Adopted by the Saeima, State President and the Cabinet are Promulgated, Published, Take Effect and Being Valid”, has already concluded: “If the Prime Minister, his Deputies and the ministers are entitled to issue decrees, then the Cabinet of Ministers, as the collegial institution, consisting of the above officials, is also entitled to issue decrees.” (*see: Judgment of the Constitutional Court of May 19m 2000 in the case No. 2000-01-04, Para 2 of the Concluding Part*).

Section 33 of the Cabinet of Ministers Structure Law that is valid as of July 1, 2008, provides that the Cabinet of Ministers, observing the requirements of State Administration Structure Law, the Administrative Procedure Law and those of other normative acts, shall be entitled to issue different legal acts, including administrative acts.

Para 100 of the Cabinet of Ministers Regulation of April 30, 1996 No. 160 “Rules of “Regulations of the Internal Order and Activities of the Cabinet of Ministers” provided that legal acts of the Cabinet of Ministers shall be designed in the form of regulations, instructions, decrees and protocol decisions of a meeting of the Cabinet of Ministers. Para 6 of this Regulation provided that a decree of the Cabinet of Ministers shall be an external administrative act that is addressed only to the natural or legal person mentioned in the decree regarding any particular issue.

In the Rules of Procedure of the Cabinet of Ministers, which substituted the abovementioned regulation of the Cabinet of Ministers, in particular, in Para 2 thereof it is provided that in accordance with the authority of the Cabinet of Ministers it shall

consider, among the rest, draft decree of the Cabinet of Ministers. Draft decree is mentioned as an independent kind of documents that shall be reviewed by the Cabinet of Ministers, it shall not be regarded as a policy document, an external legal act (international agreement or a draft international agreement, draft decision of the Saeima or draft regulation of the Cabinet of Ministers) or internal legal acts (instructions, protocol decisions or draft proposal of the Cabinet of Ministers).

Consequently, the Cabinet of Ministers is authorized to issue individual legal acts in the form of a decree, including administrative acts.

13. The Cabinet of Ministers, when fulfilling its administrative function, issues individual legal acts. When issuing an administrative act, the Cabinet of Ministers shall base upon the State Administration Law and the Administrative Procedure Law, which provides for procedures of issuing administrative acts and requirements regarding the form and content of an administrative act. It is also necessary to take into consideration general legal principles, including the principle of observance of the rights of private persons, the principle of equality, the principle of lawfulness (Section 4 of the Administrative Procedure Law). An administrative act must contain several mandatory parts: the addressee, opinions and arguments of the participants in the administrative proceedings, determination of facts, justification, which includes considerations of usefulness, enumeration of norms of law applied, legal duty imposed on the addressee or rights approved or denied, as well as an indication of where and in what term the administrative act under consideration can be contested or appealed against (Section 67 of the Administrative Procedure Law).

However, the Cabinet of Ministers fulfils its legislative or normative function by passing external normative acts – regulations of the Cabinet of Ministers. Issuing of external normative acts, the so-called regulations issued according to an administrative order when the legislator has provided a special authorization for it is one of the most important activities of State administration (*see: Dišlers K. Ievads Latvijas valststiesību zinātnē. – Rīga: A. Gulbis, 1930, pp. 191*). Issuing of regulations of the Cabinet of Ministers shall be regarded as a mechanism for implementation of legal and political decisions, namely, the executive power selects which possible legal solution of a question it would strengthen by means of normative acts.

The regulation established in Appendix II of the Regulation No. 712 regarding granting the Quotas for the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” was not issued as an administrative act.

Consequently, the regulation included in Appendix II of the Regulation No. 712 regarding granting the Quotas for the farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company” is an individual regulation issued by the Cabinet of Ministers by fulfilling its normative function.

14. As it was already concluded by the Constitutional Court, observation of the procedure of issuing a legal norm is the precondition of the validity of the legal norm (*see: Judgment of the Constitutional Court of September 21, 2005 in the case No. 2005-03-0306, Para 10.4*). Consequently, it is necessary to assess, whether the Cabinet of Ministers, by including a regulation of an individual nature into the appendix of its regulations, has observed the procedure, namely, whether the Cabinet of Ministers was authorized to include an individual regulation into the Regulation.

The Regulation No. 712 was issued in accordance with the first and the second part of Section 8 of the Biofuel Law, which provide:

“(1) The State assistance shall be granted for the production of minimum necessary annual amount of biofuel and financial assistance quotas for the types of biofuel shall be specified in accordance with the procedures provided for by the Cabinet.

(2) The Cabinet shall specify the deadline by which a report regarding the State assistance granted in the previous reference year shall be submitted, as well as the time period and the procedures by which a calculation of the assistance necessary and a justification thereof shall be submitted each year.”

Consequently, there are norms that authorize the Cabinet of Ministers to issue regulations included into the Law. In order to establish whether the Law has authorized the Cabinet of Ministers to single out, in the regulations, particular producers of biofuel that would be granted the Quotas, it is necessary to find out the objective, content and limits of the authorization (*see: Judgment of the Constitutional Court of October 9, 2007 in the case No. 2007-04-03, Para 17*).

15. The first part of Section 4 of the Biofuel Law provides for the competence of the Cabinet of Ministers in the field of biofuel, including the competence:

1) implement the State policy regarding the trade in biofuel in accordance with the provisions of this Law;

2) in submitting a draft of the annual State budget law to Saeima, provide the financing necessary for the attainment of the objectives of this Law;

3) specify the measures which would ensure that biofuel comprises not less than 2 per cent of the total amount of fuel existing in the national economy intended for transport by 31 December 2005, but by 31 December 2010 – not less than 5.75 per cent.

Taking into account what has been established in the first part of Section 4 and in the first part of Section 8 of the Biofuel Law, the objective of the legislator was to authorize the Cabinet of Ministers to establish procedure, according to which the State assistance for biofuel production shall be assigned in order to ensure that a certain proportion of biofuel used in the national economy is used within a certain term.

16. The content of the authorization reveals its essence. In the case under review, one of the authorizations established for the Cabinet of Ministers in the first part of Section 8 of the Biofuel Law is important, namely, to establish procedure, according to which the State assistance shall be allocated for production of the annual necessary minimum amount of biofuel.

The notion “procedure” in its common meaning is understood as a way of implementation of a process, organization of activities (*see: Latviešu valodas vārdnīca: 30 000 pamatvārdu un to skaidrojumu. – Rīga: Avots, 2006, pp. 491*). As the Constitutional Court has already recognized, this notion clearly indicates the procedural nature of regulations of the Cabinet of Ministers, namely, elaboration of a certain procedure. Hence no material norms that would create new legal relationships that are not provided for in the authorization and would restrict the basic rights can be included in the regulations (*see: Judgment of the Constitutional Court of October 9, 2007 in the case No. 2007-04-03, Para 20*).

The necessary minimum amount of biofuel, for production of which the State assistance is allocated, is determined based on the planned amount of biofuel to be reached indicated in Item 3 of the first part of Section 4 of the Biofuel Law. The State assistance for production of the annual necessary minimum amount is ensured by means of a direct State assistance (financial subsidy) and an indirect State assistance in the form of reduction of the excise duty (Para 4 of the Regulation No. 712).

The direct State assistance is allocated to those biofuel producers that have been granted the Quotas according to the procedures established in the Regulation No. 712. Consequently, granting of the Quota shall be regarded as one of the stages of receiving the State assistance.

Consequently, the content of the authorization to the Cabinet of Ministers established in the first part of Section 8 of the Biofuel Law is as follows: to establish procedure, according to which the State assistance shall be allocated for production of biofuel, including procedure of granting the Quotas.

17. The limits of the authorization mean the limits, at which the Cabinet of Ministers may act when elaborating and issuing legal norms. Consequently, it is necessary to find out whether the authorization to the Cabinet of Ministers also included the rights to include into the regulations of the Cabinet of Ministers the decision regarding granting of Quotas to particular biofuel producers.

In order to assess, whether the Cabinet of Ministers has exceeded the limits of the authorization provided by the legislator, the legal consequences of the action of the Cabinet of Ministers are also important. The legal consequences of external legal acts issued by the Cabinet of Ministers differ depending on their form, *int. al.* depending on the possibility to contest their lawfulness.

17.1. It is possible to contest lawfulness of normative acts issued by the Cabinet of Ministers only in the Constitutional Court. Its judgment, according to the first part of Article 32 of the Constitutional Court Law, is final, which means that it cannot be appealed against. An application to the Constitutional Court can be submitted by a particular range of subjects; a person may address the Constitutional Court only in the case of violation of the basic rights provided by the Satversme (Article 17 of the Constitutional Court Law).

The possibilities to appeal against administrative acts are broader. According to Item 2 of Section 2 of the Administrative Procedure Law, one of the basic objectives of this Law is to subject activities of the executive power that are related with public legal relations between the State and a natural person to the control of an independent, objective and competent judicial power. This control manifests itself through administrative courts system of three instances.

17.2. The Constitutional Court has already recognized that the decisions adopted by the government must give confidence that they have been adopted observing the principle of justice in order to reduce the possibility of interest conflict. Public administration in a law-governed and legal State must fulfil its functions honestly, efficiently and in a just way, as well as its activities must comply with laws. The objective of introducing the system of "check and balance", based on the principle of division of power, is to prevent tendencies of usurping power by any of the three powers and to guarantee stability of the state legal institutions, as well as continuity of functioning of the State power [*see: Judgment of the Constitutional Court of March 24, 2000 in the case No. 04-07(99), Para 3 of the Concluding Part*].

Strengthening of judicial control over decisions of the executive power is one of the basic principles of a law-governed State, which follows from the idea of division of powers. An application to the court is regarded as the most effective instrument, by means of which a person can control decisions of executive power. The task of administrative courts is to control lawfulness and validity of administrative acts issued in relation to particular persons or factual activities of institutions and officials thereof (*see: Administratīvais process tiesā. Dr. iur. J. Briedes vispārīgā zinātniskā redakcijā. – Rīga: Latvijas Vēstnesis, 2008, pp. 21*). The rights of persons to submit an application regarding constitutionality of activities of public administration to an administrative court are enshrined in the first sentence of Article 92 of the Satversme.

By introducing regulations regarding granting of the Quotas to the producers of biofuel into Appendix II of the Regulation No. 712, the Cabinet of Ministers has restricted the rights of persons to protect their rights and legal interests by addressing and administrative court. No authorization to the Cabinet of Ministers to restrict the rights of persons established in the Satversme is included into the limits of

authorization to the Cabinet established in the first part of Section 8 of the Biofuel Law.

Public institutions are not allowed to act *ultra vires* in any conditions because this would violate the rights and freedoms of persons and thus trust in judicial system would be destroyed.

Consequently, the Cabinet of Ministers, by including the Contested Regulation into Appendix II of the Regulation No. 712, has exceeded the limits of the authorization to it provided for in the first part of Section 8 of the Biofuel Law.

18. Having established non-compliance of the Contested Regulation with at least one of the legal norms of higher legal force, it shall be regarded as unlawful. Consequently, it is not necessary to assess whether the Contested Regulation complies with Item 1 of the fourth part of Section 8 of the Law “On Excise Duties”.

19. The Constitutional Court has already concluded that “exceeding the limits of the claim in a judgment is permitted and even necessary in order to ensure a more efficient protection of rights of a person and execution of a judgment” (*see: Judgment of the Constitutional Court of December 19, 2007 in the case No. 2007–13–03, Para 6 and Judgment of the Constitutional Court of April 3, 2008 in the case No. 2007-23-01, Para 17*). It is also declared in jurisprudence that in the procedures of the Constitutional Court “there are cases when it is admissible and even necessary to exceed the limits of the claim by including into examination also those norms that have not been contested or by examining compliance with the norms, compliance with which has not been contested” (*Endziņš A. Kā vērtēt jaunāko Satversmes tiesas praksi // Jurista Vārds, October 9, 2007, No. 41, pp. 5*).

In the case under review, there is reason for broadening the limits of the claim.

First of all, it is necessary to take into consideration that not only the Contested Regulation is of an individual nature, but so are the instructions provided for in Appendix II of the Regulation No. 712. The procedures of issuing thereof and the content is analogous.

Second, Appendix II of the Regulation No. 712 include the same regulation of an individual nature regarding distribution of Quotas for the biofuel producers, and it causes the same legal consequences that were established regarding Appendix II of the Regulation No. 712. The Regulation No. 712 and the Regulation No. 280 have been issued based on one and the same authorization to the Cabinet of Ministers. Examination of lawfulness of both regulations of the Cabinet of Ministers can be carried out in the frameworks of one justification.

Consequently, although the Applicant does not ask to assess the entire regulation included in Appendix II of the Regulation No. 712 and Appendix III of the Regulation No. 280, the Constitutional Court considers it possible and necessary to *ex officio* broaden the limits of the claim and assess these instructions, too. It is required by the principles of procedures of the Constitutional Court, including the principle of procedural economy (*see: Judgment of the Constitutional Court of April 3, 2008 in the case No. 2007-23-01, Para 17*).

Consequently, the Cabinet of Ministers, when issuing Appendix II of the Regulation No. 712 and Appendix III of the Regulation No. 280, has exceeded the limits of authorization provided to it in the first part of Section 8 of the Biofuel Law.

20. Substantial procedural violations of issuing a legal act serve as the grounds for annulling of this act as from the date of issuing thereof. However the situation, which would form if it were done, would even less comply with the *Satversme* (*see: Judgment of the Constitutional Court of October 22, 2002 in the case No. 2002-04-03, Para 3 of the Concluding Part*).

One of the most important general legal principles related to the field of administrative and public administration law is the principle of legal security. The farmers co-operative “Latraps” and the joint-stock company “Baltic Holding Company”, the same as other biofuel producers that have been granted the Quotas, have the rights to have confidence that activities of the Cabinet of Ministers, when granting the Quotas, has been lawful and consistent. Biofuel producers have invested considerable resources and they have confidence that they would receive the State assistance at the amount of the Quotas granted. As it is provided for by Section 10 of

the Administrative Procedure Law, An institution's error, for the occurring of which a private person can not be held at fault, may not cause unfavourable consequences for the private person.

Considerations of expedience neither allow recognizing Appendix II of the Regulation No. 712 and Appendix III of the Regulation No. 280 as invalid as from the date of issuing thereof. It is possible to agree that the State assistance for biofuel production is a relevant instrument in order to raise interests of entrepreneurs in production of biofuel and to reach a certain proportion of biofuel used if compared to the total amount of fuel used in the national economy by thus favouring utilization of environment-friendly, supply-secure and renewable energy resources.

By recognizing the regulation regarding attribution of the Quotas as invalid as from the date of issuing thereof, an unfavourable situation would be caused to all biofuel producers that have been granted the Quotas. Due to this, the Constitutional Court holds that the respective public administration institution should be given time to formulate the regulation regarding the Quota attribution included in Appendix III of the Regulation No. 280 in accordance with legal norms of higher legal force. On the other hand, Appendix II of the Regulation No. 712 has already become invalid, therefore it is not necessary to decide on the date of cancelling thereof.

Consequently, the Constitutional Court, when deciding on the date, as from which Appendix III of the Regulation No. 280 would lose validity, holds that it is possible to determine the date after coming into force of this Judgment.

Substantive Part

The Constitutional Court, based on Articles 30 – 32 of the Constitutional Court Law,

holds:

1. Appendix II of the Regulation No. 712 of September 13, 2005 by the Cabinet of Ministers “On the Procedure for Granting State Assistance for Production of the Necessary Minimum Amount of Biofuel and the Procedure for

Setting the Financial Assistance Quotas According to the Types of Biofuel” does not comply with the first part of Section 8 of the Biofuel Law.

2. Appendix III of the Regulation No. 280 of April 15, 2008 by the Cabinet of Ministers “Regulations Regarding Financial Assistance Quotas for Biofuel” does not comply with the first part of Article 8 of the Biofuel Law and is invalid as from November 1, 2008.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding Judge:

G. Kūtris