



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, January 21, 2002

JUDGMENT

in the name of the Republic of Latvia

in case No. 2001 – 09 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, the justices Anita Ušacka, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse and Ilze Skultāne,

under Article 85 set by the Satversme (Constitution), as well as Item 3 of Article 16; Article 17 (the first part , Item 11) and Article 28¹ of the Constitutional Court Law

on the basis of the constitutional claim submitted by the owners of the farm "Kantuļi"

holding the proceedings in writing reviewed the case

" On the Compliance of the Cabinet of Ministers February 27, 2001 Regulations No. 92 "Procedure for Stating the Amount of Sugar-Beet Supply for Sugar - Beet Growers with Article 91 of the Satversme (Constitution)"".

The Constitutional Court **established:**

On May 11, 1993 the Republic of Latvia Supreme Council adopted the Law "On Sugar" but on January 20, 2000 the Saeima passed Amendments to the Law. The Amendments expressed the third part of Article 3 of the Law in the following wording: "The amount of sugar-beet supply for sugar-beet growers shall be determined by the Cabinet of Ministers."

In accordance with the above, on February 22, 2000 the Cabinet of Ministers passed Regulations No. 75 "Procedure for Stating the Amount of Sugar-beet Supply for Sugar-beet Growers in 2000" (henceforth – Regulations No. 75). The Regulations include just two items. Item 2 determines that "the amount of sugar-beet supply in 2000 for every sugar-beet grower shall be determined by the Minister of Agriculture". In compliance with this authorization as well as with the second part of Article 3 (Item 2) of the Law "On Sugar" and the Cabinet of Ministers February 23, 2000 Decree No. 93 "On Sugar Manufacturing Quotas for 2000", on March 3, 2000 the Minister of Agriculture passed Directive No. 78 "On Stating of Sugar Manufacturing Quotas and the Amount of Sugar-beet Supply" (henceforth – Directive No. 78). The Directive determined sugar manufacturing quotas for sugar manufacturers and the amount of sugar-beet supply for the sugar-beet growers for 2000.

On February 27, 2001 the Cabinet of Ministers passed Regulations No. 92 "The Procedure for Stating the Amount of Sugar-beet Supply for Sugar-beet Growers" (henceforth – Regulations No. 92). Item 2, Sub-item 1 of the Regulations stated on the basis of that determined for 2000, as well as in compliance with contracts concluded on the basis of Article 3 (its second part, Item 4) of the Law "On Sugar".

The applicant of the constitutional claim (henceforth – the applicant- the farm "Kantuļi") holds that Item 2, Sub-item 1 of Regulations No. 92 in the part on stating the amount of sugar-beet supply on the basis of the amount of sugar-beet supply determined for 2000 (henceforth – the challenged norm) is unconformable with Article 91 of the Republic of Latvia Satversme-Constitution (henceforth – the Satversme).

In the constitutional claim it is pointed out that, in accordance with the challenged norm, the basis for stating the amount of sugar-beet supply for 2001 is the amount of sugar-beet supply, determined for sugar-beet growers by Regulations No.75 and the Directive of the Minister of Agriculture No. 78 for 2000. On February 19, 2001, the Riga Ziemeļu District court concluded that the amount of sugar-beet supply for the owner of the farm "Kantuļi" Aivars Cēsniēks for 2000 had not been fixed, which was illegal. Consequently, illegal and discriminating is also no fixation of the amount of sugar-beet supply for the subsequent years, referring to Directive No 78.

It is stressed that criteria, envisaging what sugar-beet growers shall receive statements on the amount of sugar-beet supply, are discriminating and have been determined arbitrarily. The criteria lose importance, if the sugar-beet grower, who does not meet the requirements of the criteria, obtains a quota – a contract on the amount of sugar-beet supply.

The applicant holds that the challenged norm creates a double standard, as one part of the sugar-beet growers is privileged.

A viewpoint is expressed in the application that the challenged norm does not comply also with the objective of the Law "On Sugar", which envisages protection of the sugar-beet growers in Latvia and creation of similar economic provisions for all sugar manufacturers.

The applicant requests to declare the challenged norm as null and void from the moment of its adoption.

In the supplement to the constitutional claim, which was submitted to the Constitutional Court on November 12, 2001, reference to the Supreme Court Senate December 20, 2000 Judgment in case No. SKC was made. The applicant points out that the Minister of Agriculture was not competent to pass Directions No.78, as the third part of the Law "On Sugar" envisages that the amount of the sugar-beet supply for sugar-beet growers shall be determined in the procedure established by the Cabinet of Ministers. The Cabinet of Ministers Regulations No. 75 includes only an announcement that the amount of sugar-beet supply for 2000 for every sugar-beet grower shall be determined by the Minister of Agriculture. Thus the Cabinet of Ministers has not passed a universal (external) normative act, which determines the procedure on the amount of sugar beet supply. The Cabinet of Ministers could not delegate the duty of passing such an act to the Minister of Agriculture.

After acquainting himself with the materials in case, the applicant has additionally pointed out that the challenged norm does not ensure implementation of the European Union demands on organization of the sugar market, as the Cabinet of Ministers declares, but is unbecomingly with the legal acts of the European Union.

The institution, which has passed the challenged act – the Cabinet of Ministers – in its written reply points out that the challenged norm is not contradicting Article 91 of the Satversme.

Making reference to the Constitutional Court Judgments in cases No. 2000-07-0409 and No. 2001-02-0106, the Cabinet of Ministers stresses that equality does not mean that human rights shall be identical. Equality allows a differentiated approach if it has a reasonable and objective justification.

The Cabinet of Ministers points out that on January 20, 2000 Amendments to the Law "On Sugar" were adopted to harmonize the normative acts of Latvia on organization of sugar market with the demands of the European Union. In accordance with the amendments, the system of quotas for sugar manufacturing was introduced, and that led to determination of the limitation of the amount of sugar-beet supply. To meet the requirements of the law, the Cabinet of

Ministers has passed several normative acts, among them also Regulations No.75. Item 2 of the Regulations delegated the Minister of Agriculture to determine the amount of sugar-beet supply for 2000. The Minister of Agriculture passed Directive No. 78 in compliance with the delegation.

The viewpoint that the Law "On Sugar" does not give the definition of the term "sugar-beet grower", therefore there has been a necessity to establish what persons shall be considered as sugar-beet growers, has been expressed in the written reply. Supplements to Directive No.78 establish that sugar-beet growers are persons, who meet the following requirements:

- 1) have supplied for manufacturing not less than 25 tons of sugar-beet in 1998;
- 2.) do not owe anything to the sugar manufacturing plants;
- 3.) in 1999 have obtained technical equipment and supplied not less than 25 tons of sugar-beet to the manufacturers.

25 tons is an average sugar-beet harvest from a little bit less than a hectare. Therefore sugar-beet growing in such or less area shall be regarded as farming on the plot of land in personal use.

In its written reply the Cabinet of Ministers points out that the Minister of Agriculture Directive has been passed on the basis of the Cabinet of Ministers June 13, 1995 Regulations No. 154 " On the Procedure of Administrative Acts".

The Cabinet of Ministers holds that quite a new system has been introduced into the relevant section after passing the 2000 Amendments to the Law "On Sugar". In 2001 it was necessary to observe the succession of the system.

The Cabinet of Ministers in its written reply affirms that in conformity with Article 3 (its second part, Item 4) of the Law " On Sugar", the sugar-beet grower has the right of passing his liabilities on the amount of sugar-beet supply, envisaged in the agreement, over to another person. Thus, any person, who wishes it, may grow sugar-beet and obtain from other persons (by purchasing, inheriting, receiving it as an endowment or any other way) the right of supplying a certain amount of sugar beet.

The Cabinet of Ministers stresses that the delegation, incorporated into the Law "On Sugar" to determine the amount of sugar-beet supply, has given it the right of differentiating the amount of sugar-beet supply for the sugar-beet growers. In this case a differentiated attitude to persons has an objective and reasonable justification: the necessity of protecting the home sugar market and the sugar-beet growers of Latvia.

The Constitutional Court **concluded:**

The challenged norm establishes that in 2001 and the next years the sugar-beet growers shall supply the same amount of sugar-beet as in 2000. Thus, the challenged norm is closely connected with Regulations No.75 and the Minister of Agriculture Directive No.78, which established the norms for 2000. Therefore to make a decision on compliance of the challenged norm with the Satversme, one shall read it together with Regulations No.75 and Directive No.78, besides, compliance of Regulations no.75 with the legal norms of higher force has to be analyzed.

From Article 1 of the Satversme, determining that Latvia is an independent democratic republic, several principles of a law-based state follow, among these also the principle of separation of power and the rule of law.

The principle of separation of law is the main principle, which envisages organization and functioning of the state power. It provides for harmonious co-operation, mutual control and derogation of the three powers, as well as moderation of the power. In a democratic state the legislative power belongs to the people and the legislator – the Parliament. Article 64 of the Satversme also determines that ” the right of legislation shall belong to both the Saeima and to the People, within the procedure and extent provided for in this Satversme.”

The executive power – the Cabinet of Ministers - has the right of issuing all-binding (external) normative acts only in cases and within the extent provided for in the Satversme and the laws. Article 14 of the Law ”The Structure of the Cabinet of Ministers” thoroughly enumerates the cases when the Cabinet of Ministers may issue normative acts. Item 2 of Article 14 determines that the Cabinet of Ministers may issue regulations ”if the law specifically authorizes the Cabinet of Ministers to do so. The authorization shall formulate the main directions of the regulations’ content.”

The legislator –the Saeima – in its Law ” On Sugar” (Article 3, the third part) delegated the right of issuing regulations on the procedure of stating the amount of sugar-beet supply for the sugar-beet growers to the Cabinet of Ministers. Thus the Cabinet of Ministers had both the right and the obligation to determine the above procedure.

When envisaging the procedure of stating the amount of sugar-beet supply, the Cabinet of Ministers had to issue a normative act with a clearly formulated objective and content, as well as to include the legal rights, duties and responsibility of the parties in it.

The Regulations had to be formulated in such a way that the persons, whose rights the normative act concerns – i.e. the sugar-beet growers, as well as the court could ascertain if the State administrative institution – the Ministry of

Agriculture – has observed the above provisions when issuing the particular administrative act, which determines the amount of sugar-beet supply for every single sugar-beet grower.

The Cabinet of Ministers had also to take into consideration the objective of the Law "On Sugar", set in the preamble of the Law: " to determine the economic and legal protection for the sugar, manufactured in Latvia, home market, to provide the inhabitants of Latvia with sugar, manufactured in Latvia as well as to protect the Latvian sugar-beet growers and create equal economic conditions for all sugar manufacturers".

As the procedure of determining the amount of supply includes provisions, limiting the rights of the sugar-beet growers, the Cabinet of Ministers, when issuing the specific normative act, had not only to follow the laws but also the Satversme. It had to especially evaluate whether the limitations were in accordance with the legitimate objectives, named in Article 116 of the Satversme. Besides the principles of fairness, equality and proportionality had to be observed as well. The procedure, determined by the Cabinet of Ministers, had to be approximated with the legal acts in the sector of sugar market of the European Union.

In compliance with the rule of law the person is to be informed on these norms. Therefore the legal norms, regulating the procedure of determining the amount of sugar-beet supply, had to be proclaimed under the procedure envisaged in the Law " 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".

However, contrary to the above, Regulations No.75 gives only a message that the Minister of Agriculture shall determine the amount of sugar-beet supply for every sugar-beet grower. With the above Regulations the Cabinet of Ministers authorized the Minister of Agriculture not only to issue an administrative act and determine the amount of sugar-beet supply for the sugar-beet growers, but also the procedure of determining the amount of sugar-beet supply, as without it, issuing of the particular administrative act would be impossible. The same follows from the written reply as well – the Minister of Agriculture was assigned to determine not only the amount of sugar-beet supply for specified sugar-beet growers but also the procedure determining the amount of sugar-beet supply.

In compliance with the rule of law state administrative institutions may act only within the authority determined by law. The Cabinet of Ministers had the right of determining the above procedure, but it did not have the right of delegating the task to somebody else. Therefore, the viewpoint that the Cabinet of Ministers had no right to forward the right of establishing the procedure of determining the amount of sugar-beet supply to the Minister of Agriculture, expressed by the applicant was well-grounded. The Cabinet of Ministers might

authorize the Minister of Agriculture to issue the administrative act, in which – in accordance with the procedure envisaged by the Cabinet of Ministers – concrete, specific sugar-beet growers would be named (determined).

Thus, Regulations No.75 were unconfirmable with Article 1 of the Satversme and the third part of Article 3 of the Law "On Sugar".

Directive No.78, issued by the Minister of Agriculture, is an administrative act. It determines sugar manufacturing quotas for sugar manufacturing plants and amount of sugar-beet supply for concrete sugar-beet growers for 2000. Thus the Directive has features of an individual act. However, Directive No.78 is the only legal act, which determines criteria for both – the sugar-beet suppliers and the amount of sugar-beet supply. It means that all-binding legal norms are included in this legal act.

The Directive of the Minister of Agriculture was not published in the official newspaper "Latvijas Vēstnesis", but in "Lauku Avīze". The text of the Directive No.78, published in the newspaper on March 14, 2000, was incomplete. The text had no heading and only the director of the Department of Agricultural Sectors and Development of Processing had signed it. Thus, it was not understandable namely what legal act had been published in the newspaper "Lauku Avīze".

Besides, even though the written reply refers to three criteria, used by the Minister of Agriculture when determining the sugar-beet suppliers, only one of the criteria is mentioned in the Supplement to Directive No.78. The two other are not mentioned in the legal acts.

In such a way the sugar-beet growers were denied the right of being informed on the alterations in the procedure of supplying sugar-beet. Those persons, whose rights were violated by the Directive No.78, had difficulties in protecting their rights against the potential illegal activities of administrative institutions and sugar manufacturing enterprises.

Thus there was no legal ground to issue Directive No.78, which was based on the illegal Regulations No.75.

In accordance with the law and general legal principles, the normative act loses validity in several cases, even then, if the limited time of validity of a normative act has expired or another normative act with the same or higher legal force, regulating the same issues has taken effect (*see the Constitutional Court Judgment in case No.04-01/97/*).

Regulations No. 75 refer to the procedure of determining the amount of sugar-beet supply for 2000. Thus – the term, which is limiting the Regulations, has set in. Besides, Regulations No.92, which envisage the procedure of

determining the amount of supply for the sugar-beet growers for 2001 and the further years, regulate the same issues as Regulations No.75, which have lost validity.

Item 2, Sub-item 1 of Regulations No.92 envisages that the amount of sugar-beet supply is determined on the basis of the determined for 2000 amount and the acquired agreement liabilities.

Even though Regulations No.92 include other norms on the procedure of determining the amount of sugar-beet supply as well, the Cabinet of Ministers has not established the procedure by which – in compliance with the principles of a law-based state and the Law "On Sugar" – amount of sugar-beet supply shall be determined.

As the challenged norm envisages to base determination of the amount of the sugar-beet supply on the amount of 2000, determined by legal acts, which violate the Satversme and the law, it is unconfirmable with Article 1 of the Satversme and the third part of Article 3 of the Law "On Sugar".

The challenged norm does not incorporate clear and complete criteria of dividing the sugar-beet growers into two groups: those for whom the amount of sugar-beet supply is determined and those for whom the amount of sugar-beet supply is not determined. Therefore it is not possible to evaluate conformity of the challenged norm with Article 91 of the Satversme.

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

the Constitutional Court decided:

to declare Item 2, Sub-item 1 of the Cabinet of Ministers February 27, 2001 Regulations No.92 "The Procedure of Stating the Amount of Sugar-beet Supply for the Sugar-beet Growers" in the part of determining the amount of sugar-beet supply on the basis of the amount of sugar-beet supply determined for the sugar-beet growers in 2000 **as unconfirmable with Article 1 of the Satversme and the third part of Article 3 of the Law "On Sugar" and null and void from the moment of the publication of the Judgment.**

The Judgment is final and allowing of no appeal.

The Chairman of the Constitutional Court session

Aivars Endziņš