



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, June 27, 2000

JUDGMENT in the name of the Republic of Latvia

in case No. 2000 – 05 – 05

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

in the presence of the sworn advocate Aigars Lūsis - the representative of the petitioner i.e. twenty one deputy of the 7th. Saeima, namely, Ingrīda Ūdre, Imants Stirāns, Andris Bērziņš, Jevgenija Stalidzāne, Raimonds Pauls, Romāns Mežeckis, Silvija Dreimane, Gundars Bojārs, Jānis Leja, Rišards Labanovskis, Egils Baldzēns, Osvalds Zvejsalnieks, Leons Bojārs, Viola Lāzo, Aija Barča, Pēteris Salkazanovs, Jānis Čevers, Valdis Lauskis, Arnis Kalniņš, Oskars Grīgs, Imants Burvis

and the representative of the Prime Minister- the official who issued the act, which is disputed – the assistant of the Head of the State Civil Department Māris Knoks,

under Article 85 set by the Satversme (Constitution) as well as Item 5 of Article 16 and the third part of Article 17 (Item 3) of the Constitutional Court Law,

in a public hearing in Riga on June 13, 2000 reviewed the case

”On Conformity of the Prime Minister’s February 15, 2000 Decree No. 51 ” On Initiating a Disciplinary Case against the Director of the State Administrative Office (Chancellery) A.Vītols” with Article 32 of the Cabinet of Ministers Structure Law, Article 1 (Parts Three and Four) and the First Part of Article 58 of the Law ”On the State Civil Service””.

The Constitutional Court **established:**

On May 20, 1998 the Cabinet of Ministers, taking into consideration the recommendation of the Prime Minister Guntars Krasts, passed the Decree No.247 "On A. Vītols", appointing Alvis Vītols to the post of the Director of the State Administrative Office (Chancellery).

On February 15, 2000 the Prime Minister Andris Šķēle, who held that, when building premises for relaxation in the building of the State Administrative Office and keeping it secret, the State budget funds had been groundlessly spent and the Laws "On the State Budget", "On the Budget and Financial Management", "On the State Civil Service" as well as other normative acts violated, passed the Decree No. 51 "On Initiating a Disciplinary Case against the Director of the State Administrative Office A.Vītols".

On February 15, 2000 the Director of the State Administrative Office Alvis Vītols informed the Prime Minister Andris Šķēle, that the above Decree contradicted Item 23 of the Statute of the State Administrative Office.

At the Cabinet of Ministers February 15, 2000 meeting the information, expressed by the Prime Minister Andris Šķēle on initiating a disciplinary case against the Director of the State Administrative Office Alvis Vītols and his dismissal from the post for the period of reviewing the disciplinary case (the Cabinet of Ministers February 15, 2000 Protocol Decision- Protocol No.8, 1 "On the Director of the State Administrative Office"; henceforth – the Protocol Decision) was brought to the notice of the Cabinet and taken into consideration. Besides, the Cabinet of Ministers assigned the Head of the Legal Department Agnese Kveska to fulfil the duties of the Director of the State Administrative Office for the period of reviewing the disciplinary case.

On March 14, 2000 the Cabinet of Ministers on the basis of the March 13, 2000 Decision by State Civil Service Department No.14 "On Evaluation of Activities of A.Vītols" issued Decree No.120 "On Dismissal of A.Vītols from the Post of the Director of the State Administrative Office". The Cabinet of Ministers also declared the Decree with which Alvis Vītols was appointed to the post of the Director of the State Administrative Office null and void.

The submitter of the application requested the Constitutional Court to declare Prime Minister's February 15, 2000 Decree No.51 "On Initiating a Disciplinary Case against the Director of the State Administrative Office Alvis Vītols" (henceforth – the disputable act) as incompatible with Article 32 of the Cabinet of Ministers Structure Law, the third and fourth parts of Article 1 and the first part of Article 58 of the Law "On the State Civil Service", Item 23 of the Statute of the State Administrative Office (henceforth- the Statute) and Item 157 of the Cabinet of Ministers April 30,1996 Regulations No. 160 "Rules of

Procedure and Activity of the Cabinet of Ministers” (henceforth- Regulations No. 160).

The applicant points out that in accordance with Article 32 of the Cabinet of Ministers Structure Law, the Director of the State Administrative office shall be appointed on the basis of the State Civil Service Law. To his mind the third part of Article 1 of the Civil Service Law determines that the State Administrative Office is a civil institution of the state. In his opinion Article 58 of the same law envisages that the head of the civil institution may dismiss an official for the period of review of the disciplinary case. In accordance with the fourth part of Article 1 of the Law on Civil Service, the head of a state civil office is a person who –under the procedure envisaged by law -has been appointed the leader of any civil office or institution, which has the right of appointing or dismissing an official from office.

In its turn, Item 157 of Regulations No.160 determines that the Cabinet of Ministers appoints and dismisses the Director of the State Administrative Office. Analogous norm is expressed in Item 23 of the Statute, establishing that the Director of the State Administrative Office shall be appointed and dismissed with the decree of the Cabinet of Ministers on the suggestion of the Prime Minister.

It is stressed in the application that Alvis Vītols has been appointed the Director of the State Administrative Office with the Decree of the Cabinet of Ministers. And –according to the applicant – the Prime Minister is not authorised to pass a decree on dismissal of Alvis Vītols from the office as it is within the competence of the Cabinet of Ministers.

Besides, the applicant points out that on February 15, 2000 the Director of the State Administrative Office has informed the Prime Minister about incompatibility of the disputable act with Item 23 of the Statute, however the decree was not repealed.

At the Court session the sworn advocate Aigars Lūsis upheld the claim and stressed that the most essential task had been to find out, what subject was authorised to make a decision on dismissing the Director of the State Administrative Office for the period of reviewing the disciplinary case. The Director of the State Administrative Office is the official of the highest rank, to be appointed and dismissed only with the decree of the Cabinet of Ministers and the viewpoint of the Prime Minister may serve only as a recommendation or suggestion.

The representative of the applicant pointed out that the Director of the State Administrative Office had been dismissed by the disputable act. He expressed the viewpoint that no effective legal act referred to the possibility of dismissing the Director of the State Administrative Office with the Protocol Decision by

the Cabinet of Ministers. The contents of the Protocol Decision serves as the proof that it is not the decision of the institution of collegial governance as the Cabinet of Ministers has only taken the fact of passing the disputable act into consideration. Thus the first sentence of the Protocol Decision is just of an informative nature.

The Cabinet of Ministers in its written reply states that the viewpoint expressed in the application, namely- that the Cabinet of Ministers has not adopted the decision to dismiss the Director of the State Administrative Office, is ungrounded.

In the reply it is stressed that the Cabinet of Ministers, when adopting the Protocol Decision, which – in compliance with Item 10 of the Regulations No. 160 – is binding to the Director of the State Administrative Office and other officials of the state institutions, has accepted the act of the Prime Minister, namely, initiating a disciplinary case against the Director of the State Administrative office, and adopted the decision of dismissing him from office. Besides, the Cabinet of Ministers assigned the Head of the Legal Department Agnese Kveska to fulfil the duties of the Director of the State Administrative Office.

Moreover, in conformity with Article 9 of August 16, 1994 Cabinet of Ministers Regulations No. 158 (issued under Article 81 of the Satversme) "On Disciplinary Liability" (henceforth- Regulations on disciplinary liability) and Item 70 of June 13, 1995 Cabinet of Ministers Regulations No.154 "On the Process of Administrative Acts", a viewpoint was expressed that after passing the Cabinet of Ministers March 14, 2000 Decree No. 120 "On Dismissal of A.Vītols from the Post of the Director of the State Administrative Office" the disputable act had lost its validity. Therefore its repeal has not been needed.

At the Court session the representative of the Prime Minister Māris Knoks stressed that the most important thing was to find out if under the above circumstances the Prime Minister had had the right of acting operatively and if the Cabinet of Ministers had really not adopted any decision.

The representative of the Prime Minister expressed the viewpoint that – in conformity with Item 23 of the Statute – the Prime Minister had to act operatively not only when nominating somebody as the candidate for the post of the Director of the State Administrative Office but also when asking to initiate a disciplinary case against him/her. By passing the disputable act the Statute has not been violated, as the Prime Minister could not react in a different manner. The disputable act in this case should be considered as a suggestion. The procedure, envisaged in Regulations No. 160, should not be attributed to this case, as the Prime Minister - being the direct leader – did not have to ask the consent of other officials. To his mind, Regulations on Disciplinary Sanctions– the objective of which is to effectively avert violation

– shall be taken into consideration. And it has been achieved by immediate initiating of a case.

Māris Knoks stressed that the Protocol Decision, assigning the Head of the Legal Department Agnese Kveska to fulfil the duties of the Director of the State Administrative Department for the period of investigation of the case had been the Decision of the Cabinet of Ministers. And it is understandable that the Cabinet of Ministers agreed to both: initiation of a disciplinary case and the opinion that another person and not Alvis Vītols had to fulfil the duties of the Director of the State Administrative Office. And this Decision has served as the basis for further activity in connection with the disciplinary case up to dismissal of Alvis Vītols from the office. Thus, the Protocol Decision in this definite case should conceptually be paralleled with a written decree.

Besides, all the involved officials have understood the will of the Cabinet of Ministers, expressed in the Protocol Decision: Agnese Kveska started fulfilling the duties of the Director of the State Administrative Office and Alvis Vītols did not appear at his office on the next day.

The representative of the Prime Minister pointed out that the normative acts did not include an exact procedure how to act in the above specific case. Both the Prime Minister and the Cabinet of Ministers, in accordance with the objective envisaged in legal norms – to avert unlawful activity - had expressed their will. The addressee has been given notice and has understood it. Thus, the Prime Minister and the Cabinet of Ministers have acted legally.

The representative of the Prime Minister expressed the viewpoint that the disputable act had lost validity on the moment of adoption of the Protocol Decision. In its turn, by dismissing Alvis Vītols from office, the Protocol Decision on discharge from the post has been implemented and lost validity.

At the Court session the invited witness Aldis Vītols explained that – in accordance with the job description - the Director of the State Administrative Office was subordinated to the Prime Minister. The Prime Minister certifies the agenda of the Cabinet of Ministers, and the State Administrative Office prepares draft acts of the Cabinet of Ministers on assignment of the Prime Minister. The draft decree on dismissal of the Director of the State Administrative Office should have been prepared and included in the agenda of the Cabinet of Ministers meeting in the same manner. The Head of the Legal Department could have signed the draft.

The witness Alvis Vītols holds that the Protocol Decision of the Cabinet of Ministers meeting, is an entry in the protocol, which expresses the attitude of the members of the Cabinet of Ministers. It usually starts with words ” to accept”, ” to adopt”, and “to assign”. In the particular case, when adopting the

Protocol Decision, the attitude of the members of the Cabinet of Ministers about initiating a disciplinary case against Alvis Vītols and his dismissal from office has not been expressed. Thus the Protocol Decision has been in the form of an act but its content has been an information.

The witness Alvis Vītols is of the opinion that just the disputable act has been of legal importance, because it has served as the basis of the investigation of the disciplinary case. The Cabinet of Ministers has not accepted it, in no protocol one can find an entry that the disputable act is accepted. The Protocol Decision is only informative. In the above case the Decree of the Cabinet of Ministers has been required.

The Constitutional Court, evaluating compliance of the disputable act to the law

concluded:

1. In the understanding of the Law on State Civil Service the State Administrative Office is a state civil office. In conformity with Article 32 of the Cabinet of Ministers Structure Law, the Director, who has been appointed in accordance with the Law on State Civil Service, shall manage the State Administrative Office. Article 33 of the same Law envisages that the State Administrative Office shall supervise the documentation for the Cabinet of Ministers and the Prime Minister, but the Director of the State Administrative Office shall manage the budget of the Cabinet of Ministers and the State Administrative Office.

Item 23 of the Statute determines that the Director of the State Administrative Office is the official of the highest rank, who shall be appointed and dismissed from the office with the Decree of the Cabinet of Ministers on the initiative of the Prime Minister.

Regulations No. 160 and the Statute authorise the Director of the State Administrative Office with extensive power in organising the activities of the Cabinet of Ministers and in ensuring the advancement of submitted drafts of legal acts as well as drafts of the decrees by the Prime Minister.

On July 24, 1998, following the Instruction No. 530 by Alvis Vītols, the job description of the Director of the State Administrative Office was confirmed, determining that the Director of the State Administrative Office was directly subordinated to the Prime Minister. Among other special assignments the "duty to vise drafts of legal acts of the Cabinet of Ministers before submitting them to the Prime Minister for signature" has been named.

If the official of the civil service has committed a disciplinary offence, the Law on the State Civil Service and Regulations on Disciplinary Sanctions regulate the procedure of applying disciplinary sanctions.

The first part of Article 29 of the State Civil Service Law envisages that disciplinary cases may be initiated against a civil servant for violation of the laws and other normative acts in performing one's official duties, as well as for violations on the procedures of the state civil service determined by regulations, instructions and specific civil service job descriptions. In its turn, the first part of Article 7 of the Regulations on Disciplinary Sanctions determines – if the head of a state civil service institution gets to know some facts about a disciplinary violation, he shall initiate a disciplinary case immediately, but not later than a month after the facts have been found out.

Both- the first part of Article 58 of the state Civil Service Law and Article 9 of the Regulations on Disciplinary Sanctions envisage that to perform an official investigation in case of a disciplinary violation the head of a state civil institution may for the time of the investigation suspend a civil servant from performing his/her civil service duties, without suspending the remuneration.

Thus the head of a state civil institution has the right of initiating a disciplinary case against a civil servant and dismissing him/her from the office.

In its turn, part 4 of Article 1 of the State Civil Service Law determines that ” the head of a state civil institution shall be the duly appointed head of any state civil institution or an institution itself, authorised to appoint and dismiss, transfer or suspend a civil servant (civil servant candidate) in accordance with the procedures set by this Law.”

When ascertaining the notion of the term ”head of a state civil institution” taking into consideration the legal norms, regulating charging officials (also the Director of the State Administrative Office), appointed by the Cabinet of Ministers with disciplinary liability, it becomes clear that only the Cabinet of Ministers may initiate a disciplinary case against the Director of the State Administrative Office and to dismiss him from performing his civil service duties. Secondly, there are no legal norms, which name the person, who experiences the right of expressing the proposal of initiating a disciplinary case and dismissal of an official from the office. However, as the Director of the State Administrative Office is appointed and dismissed from the office on the initiative of the Prime Minister, then the Prime Minister as the immediate superior had the right of expressing the motion to initiate a disciplinary case against the Director of the State Administrative Office and his dismissal from the post.

Thus the Prime Minister did not have the right of passing the disputable act and it shall be regarded only as a proposal to initiate a disciplinary case against the Director of the State Administrative Office Alvis Vītols.

2. Any disciplinary case initiated against a state official is an undivided administrative process, consisting of succession of stages: initiation of the disciplinary case (the process), establishment of facts, i.e., investigation of the disciplinary case, evaluation of the established facts, reaching the decision (whether disciplinary violation has taken place), imposition of disciplinary sanctions (passing of the administrative act and informing about it) or termination of the disciplinary case. Neither initiation of disciplinary case, nor dismissal from the office shall be reviewed separately from the whole process.

The petitioner, when evaluating the disputable act separately from the Protocol Decision, has ungroundedly limited the claim.

To find out whether the legal subject has made the decision on initiating the disciplinary case, i.e., the head of the state civil institution – the Cabinet of Ministers, not only conformity of the disputable act shall be evaluated but also conformity of the Protocol Decision with Article 32 of the Cabinet of Ministers Structure Law and the State Civil Service Law.

Article 29 of the State Civil Service Law determines that a disciplinary case may be initiated against a civil servant, in its turn the first part of Article 7 of the Regulations on Disciplinary Sanctions establishes that the head of a state civil institution initiates a disciplinary case with a written decree.

In accordance with Article 58 of the State Civil Service Law in case of a disciplinary violation the head of a state civil institution may for the time of the investigation suspend a civil servant from performing his/her civil duties. But Article 9 of the Regulations on Disciplinary Sanctions envisages that the head of a state civil institution may suspend the civil servant from performing his/her duties with a written decree.

Neither the State Civil Service Law nor the Regulations on Disciplinary Sanctions envisage another procedure for adoption of decisions initiated by the head of a state civil institution.

In conformity with the State Civil Service Law and Regulations on Disciplinary Sanctions, suspension of a civil servant from performing his/her duties for the time of the investigation is not a mandatory part of the process of a disciplinary case. Article 7 of the Regulations on Disciplinary Sanctions obligates the head of a state civil institution to immediately initiate a disciplinary case if he/she has found out facts on disciplinary violation. But

Article 9 gives the right to dismiss the civil servant from the office. The head of a state civil institution may reach the decision of dismissal from the office, after considering specified circumstances. Dismissal from office is preventive means – a possibility to avert probable further disciplinary violation.

In compliance with Article 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" and Regulations No.160, decisions of the Cabinet of Ministers may be adopted (arranged) in the form of regulations, instructions, recommendations, excerpts from the minutes of the meeting (Protocol Decisions) as well as decrees.

By its decrees the Cabinet of Ministers assigns certain duties and arranges other specific administrative and organising issues.

In their turn Protocol Decisions are decisions, referring to the Cabinet of Ministers members, the State Administrative Office or other institutions and officials, and which are adopted at the Cabinet of Ministers meetings.

As is seen from the Protocol Decision, the Cabinet of Ministers has taken into consideration the information on initiating a disciplinary case against the Director of the State Administrative Office Alvis Vītols and suspending him from performing his duties for the time of investigation. Ungrounded is the viewpoint of the representative of the petitioner and the witness, that the Protocol Decision shall be just regarded as information (to their mind the words "to take into consideration" indicate the above). They are of the opinion that the members of the Cabinet of Ministers have not expressed their attitude to the issue. The second sentence of the Protocol Decision, which expresses the resolution of assigning the Head of the Legal Department Agnese Kveska to fulfil the duties of the Director of the State Administrative Office for the time of investigation of the disciplinary case, indicates that the Cabinet of Ministers has not just passively listened to the information, furnished by the Prime Minister. The Cabinet accepted the suggestion of the Prime Minister to initiate a disciplinary case and dismiss Alvis Vītols from the post because it was suspected state budget funds had been groundlessly wasted.

Besides, in accordance with Item 96 of Regulations No.160, the members of the Cabinet of Ministers had the possibility of submitting written notes or objections on the contents of the Protocol Decision within two days after receipt of the above act.

When adopting the Protocol Decision the Cabinet of Ministers has expressed its attitude and voiced the will to initiate the disciplinary case against Alvis Vītols and remove him from office.

The fact that the will of the Cabinet of Ministers is expressed in the form of the Protocol Decision does not serve as a sufficient reason to state that the Cabinet of Ministers as the head of a state civil institution has not expressed that will at all.

Besides, on the moment of signing the Protocol Decision, both addressees – Alvis Vītols and Agnese Kveska - had known the will of the Cabinet of Ministers, they took it into account and acted in accordance to it.

Thus, the Cabinet of Ministers has acted as the head of a state civil institution and made the decision taking into consideration the sense of the first part of Article 7 and Article 9 of the Regulations on Disciplinary Sanctions.

3. In compliance with Item 5 of Article 16 of the Constitutional Court Law, the Constitutional Court reviews compliance of acts of the President of State, Chairperson of the Saeima and the Prime Minister with the Constitution and other laws. Therefore, review of the part of the case, which refers to conformity of the disputable act with Item 157 of Regulations No.160 and Item 23 of the Statute, is not within the competence of the Constitutional Court.

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

the Constitutional Court

DECIDED :

1. **To declare that Prime Minister's February 15, 2000 Decree No.51 on initiating a disciplinary case against the Director of the State Administrative Office and his removal from office was a motion and is an integral part of the Cabinet of Ministers February 15, 2000 Protocol Decision (protocol No.8, section 1) "On the Director of the State Administrative Office".**
2. **To declare that the Protocol Decision "On the Director of the State Administrative Office"(No.8, section 1) of the Cabinet of Ministers meeting complies with Article 32 of the Cabinet of Ministers Structure Law, the third and fourth parts of Article 1, Article 29 and the first part of Article 58 of the Law "On the State Civil Service".**

The Judgment takes effect from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on June 27, 2000.

The Chairman of the Court session	Aivars Endziņš
Justice of the Constitutional Court	Ilma Čepāne
Justice of the Constitutional Court	Romāns Apsītis
Justice of the Constitutional Court	Juris Jelāgins
Justice of the Constitutional Court	Andrejs Lepse
Justice of the Constitutional Court	Ilze Skultāne
Justice of the Constitutional Court	Anita Ušacka