



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, May 10, 2000

JUDGEMENT in the name of the Republic of Latvia

in case No. 2000-01-04

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Romāns Apsītis, the judges Anita Ušacka and Ilma Čepāne, with the secretary of the Court session Linda Vīnkalna,

in the presence of the deputy Egils Baldzēns and the Saeima LSDSP faction advisor Ināra Vaivode – the representatives of the petitioner i.e. twenty four deputies of the Saeima, namely: Egils Baldzēns, Leonards Stašs, Rišards Labanovskis, Jānis Leja, Leons Bojārs, Pēteris Salkazanovs, Arnis Kalniņš, Viola Lāzo, Imants Burvis, Jānis Čeveris, Aija Barča, Jānis Ādamsons, Silvija Dreimane, Raimonds Pauls, Andris Bērziņš, Jevgenija Stalidzāne, Imants Stirāns, Ingrīda Ūdre, Ainārs Šlesers, Oskars Grīgs, Andrejs Pantelējevs, Vanda Kezika, Guntis Dambergis and Vilis Krištopāns

as well as the deputy Oļegs Deņisovs and the sworn advocate Aleksandrs Ogurcovs – the representatives of the applicant, i.e. twenty one Saeima deputies, namely: Oļegs Deņisovs, Jānis Jurkāns, Juris Sokolovskis, Aleksandrs Bartašēvičs, Jakovs Pliners, Modris Lujāns, Andrejs Klementjevs, Oļegs Tolmačovs, Aleksandrs Golubovs, Boriss Rastopirkins, Igors Solovjovs, Martijans Bekasovs, Leons Bojārs, Pēteris Salkazanovs, Jānis Leja, Arnis Kalniņš, Valdis Lauska, Imants Burvis, Osvalds Zvejsalnieks, Boriss Cilevičs and Miroslavs Mitrofanovs

and the authorised representatives of the Cabinet of Ministers – the institution that issued the act, which is disputed – Anatolijs Melnis and the sworn advocate Agnese Skulme,

under Article 85 set by the Satversme (Constitution) as well as Item 4 of Article 16 and the second part of Article 17 of the Constitutional Court Law,

in a public hearing in Riga on April 26, 2000 reviewed the case

”On Conformity of the Cabinet of Ministers August 12, 1999 Decree No. 384 ”On Reorganization of the Latvian University and the Latvian Medicine Academy” and the Cabinet of Ministers August 12, 1999 Decree No. 383 ”On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State” with the ”Higher School Law” and Article 15¹ of the Cabinet of Ministers Structure Law””.

The Constitutional Court **established:**

On August 12, 1999 the Cabinet of Ministers issued the Decree No.384 ”On Reorganisation of the Latvian University and the Latvian Medicine Academy” and the Decree No.383 ”On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State ”. Both the above decrees were issued referring to the first part of Article 11 of the ”Higher School Law”, adopted on November 2, 1995.

By the Decree ”On Reorganization of the Latvian University and the Medicine Academy” the Cabinet of Ministers established that reorganization of the Latvian University and the Medicine Academy (i.e. joining of the Medicine Academy to the Latvian University) shall be commenced on September 1, 1999.

The Decree ”On Liquidation of the Riga Aviation University as the Higher Educational Institution, Founded by the State” envisaged to liquidate the Riga Aviation University as the higher educational institution founded by the state.

The applicants hold that the Cabinet of Ministers August 12, 1999 Decree No. 384 ”On Reorganization of the Latvian University and the Medicine Academy” and the Cabinet of Ministers August 12, 1999 Decree No. 383 ”On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State” (henceforth- the disputable decrees) are not in conformity with the ”Higher School Law”, and correspondingly with the Supreme Council February 23, 1993 Resolution ”On Approval of the Medicine Academy Satversme (Statute)” and the Supreme Council July 7, 1992 Resolution ”On Approval of the Riga Aviation University Satversme (Statute)”, as well as with Article 15¹ of the Cabinet of Ministers Structure Law and Cabinet of Ministers April 30, 1996 Regulations No. 160 ”Rules of Procedure of the Cabinet of Ministers” (henceforth- Rules of Procedure of the Cabinet of Ministers).

The applications include the statement that in accordance with Article 4(the second part, Item 2) of the ”Higher School Law” the autonomy of a higher educational institution is expressed in the right to independently determine its

own organizational and administrative structure, therefore to the mind of the petitioners, the Cabinet of Ministers, when issuing the disputable Decrees, has violated the rights of the higher educational institutions.

In the supplement to the application on the Cabinet of Ministers August 12, 1999 Decree " On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State" it is pointed out that, in compliance with the first Part of Article 7 of the Higher School Law ", the state founded higher schools are self-governing institutions. By issuing August 12, 2000 Decree No.383 "On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by State" the Cabinet of Ministers has violated the self-governing rights of the higher school.

It is stressed that, in compliance with Article 8 (its third part) and Article 10 (the third part) of the Higher School Law, the Statutes of universities shall be adopted by the institution of collegial governance of the higher school and approved by the Saeima. Both the Latvian Medicine Academy and the Riga Aviation University are institutions of an autonomous university type. The Statutes of the above universities have been approved by the decisions of the Supreme Council. The disputable decrees, to their mind, do not comply with the norms of the Higher School Law as well as with the corresponding Supreme Council February 23, 1993 Resolution "On Approval of the Medicine Academy Statute" and July 7, 1992 Resolution "On Approval of the Riga Aviation University Statute" and the approved on the basis of the above Resolutions Statutes of the Medicine Academy and the Riga Aviation University.

In both applications the viewpoint that- in accordance with Article 15¹ of the Cabinet of Ministers Structure Law- the Prime Minister, his deputies and the ministers, but not the Cabinet of Ministers are authorized to pass decrees- is expressed.

The petitioners in their application on the Cabinet of Ministers August 12, 1999 Decree " On Reorganization of the Latvian University and the Latvian Medicine Academy" point out that when issuing the decree "On Reorganization of the Latvian University and the Latvian Medicine Academy", neither the written opinion of the Higher Education Council nor those of the Ministries of Welfare, Justice and Finance have been attached to the project. To their opinion the Cabinet of Ministers, when passing the disputable Decree, has violated Article 11 of the Higher Education Law and Items 8, 16 and 17(sub item 4) of the Rules of Procedure of the Cabinet of Ministers. The application on the Cabinet of Ministers August 12, 1999 Decree No. 383 "On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State" also includes the statement that Item 8 of the Rules of Procedure of the Cabinet of Ministers, in compliance with which "decrees, causing inconvenience to the addressee, which include some restriction or prohibition

shall be issued only in conformity with the Satversme (Constitution), laws or regulations of the Cabinet of Ministers. When passing the above decree, the reference to the respective legal norm shall be included”.

At the Court session the representatives of the petitioners upheld the aforementioned claim.

Although both representatives of the petitioners acknowledged that it was within the jurisdiction of the Cabinet of Ministers to adopt decisions on reorganization and liquidation of higher educational institutions, at the Court session they pleaded the viewpoint that the disputable decrees had been passed by violating the procedure envisaged in the Higher School Law, the Cabinet of Ministers Structure Law and the Rules of Procedure of the Cabinet of Ministers. Besides, the competence of the higher educational institutions to make a decision on liquidation or reorganisation itself, which is envisaged in their Satversmes, has not been reckoned with.

At the Court session the representative of twenty four Saeima deputies Egils Baldzēns maintained that the Cabinet of Ministers by passing August 12,1999 Decree No.384 "On Reorganization of the Latvian University and the Latvian Medicine Academy” has violated not only the above mentioned norms of the Higher Education Law but also other norms as well. Namely, the first Part of Article 11, the first and fifth parts of Article 10, Articles 53, 54, 64, 65, 69 and 70. According to him, the Cabinet of Ministers has violated the Saeima authority, the rights of the students’ self-government, the authority of the Rector’s Council and the Higher Education Council, established by the Higher Education Law. The competence of the above state and public institutions, determined by the above Law, restricts the right of the Cabinet of Ministers to make decisions on reorganization and liquidation of higher educational institutions.

The sworn advocate Aleksandrs Ogurcovs at the Court session expressed the viewpoint that first of all the Saeima had had to adopt the decision on cancelling the University Satversme and only after that the Council of Ministers would have the right of issuing the decree on reorganization or liquidation of a higher educational institution.

Both representatives of the petitioners stressed that, by passing the disputable decrees, the Cabinet of Ministers had violated the procedure, established in the first part of Article 11 of the Higher School Law. In both cases the documents, submitted to the Cabinet of Ministers by the Higher Education Council, because of their contents and form could not be considered conclusions in the understanding of the first part of the Higher Education Law. The Minister of Education and Science had not attached these conclusions to the proposal to reorganize or liquidate the higher school as is determined by the first part of Article 11 of the Higher School Law. The documents were

submitted to the State Chancellery separately and later. Besides the conclusions have not been registered by the State Chancellery under the procedure envisaged in the normative acts.

Representatives of the petitioners pointed out that the disputable decrees had been adopted in an ungrounded hurry, the respective ministries had not approved the documents. Thus the procedure of issuing legal acts by the Cabinet of Ministers has been violated. The representative of the Saeima deputies Egils Baldzēns stressed that the Cabinet of Ministers by adopting August 12, 1999 Decree "On Reorganization of the Latvian University and the Latvian Medicine Academy" has violated not only the above Items of the Rules of Procedure of the Cabinet of Ministers but also Items 17, 23, 25, 30, 31, 32, 33, 34, 35, 36 and 40.

In his turn, the sworn advocate Aleksandrs Ogurcovs maintained that the Cabinet of Ministers project of the Decree "On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State" has not been signed by the responsible officials of the Ministry of Education and Science, as is envisaged in Item 16 of the Rules of Procedure of the Cabinet of Ministers. In addition he mentioned that the above project by the Cabinet of Ministers has been forwarded for review at the Cabinet of Ministers session, not taking into consideration Items 6, 8, 47, 68 and 76 of the Rules of Procedure of the Cabinet of Ministers.

The sworn advocate Aleksandrs Ogurcovs stressed that to his mind the Cabinet of Ministers had no right of issuing decisions on reorganization and liquidation of a higher educational institution in the form of the decree of the Cabinet of Ministers. Decisions by the Cabinet of Ministers like these- in accordance with the first Part of the Law on Higher Education – shall be adopted in the form of a Cabinet of Ministers resolution.

The applicants mentioned that the Latvian Medicine Academy and the Riga Aviation University had observed the demand expressed in Item 1 of the Transitional Provisions of the Higher Education Law i.e. within three months to comply their Satversmes (statutes) with the requirement of this Law and submit them to the Ministry of Education and Science. However, the Satversmes- for reasons not depending on the higher educational institutions- were not forwarded for approval to the Saeima and had not been approved.

Both petitioners requested to declare the disputable decrees null and void from the moment of their acceptance.

The Cabinet of Ministers in the written reply points out that the disputable decrees do not contradict the Higher School Law, the Supreme Council February 23, 1993 Resolution "On Approval of the Latvian Medicine Academy

Satversme” and the Supreme Council July 7, 1992 Resolution ”On Approval of the Riga Aviation University Satversme”, Article 15¹ of the Cabinet of Ministers Structure Law and the Rules of Procedure of the Cabinet of Ministers. The Cabinet of Ministers requests to consider the applications ungrounded and reject the petitions. The Cabinet states that the disputable decrees have been issued under the 4th Chapter of the Satversme and taking into consideration the procedural demands of the Rules of Procedure of the Cabinet of Ministers.

The written replies indicate that, in accordance with the first part of Article 11 of the Higher Education Law, ”the decision on reorganization or liquidation of a higher school after the proposal of the Minister of Education and Science shall be adopted by the Cabinet of Ministers”, thus reorganization and liquidation of the state higher educational institutions is within the jurisdiction of the Cabinet of Ministers.

In the written reply on August 12, 1999 Decree No. 383 ”On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State” it is stressed that the Cabinet of Ministers has not violated the right of the Riga Aviation University to independently determine its own organizational and administrative structure and the right to self-governing, as in compliance with the first part of Article 4 of the Law ”the autonomy of higher schools is characterized by the division of the authority between the state institutions and the administration of higher school”.

The Cabinet of Ministers in its written replies points out that both the above higher schools had to observe Item 1 of the Transitional Provisions of the Higher Education Law: ”Higher schools within three months after the day this Law takes effect shall comply their Satversmes (statutes) with the requirements of this Law and submit them to the Ministry of Education and Science”. It had not been done. Satversmes of the higher educational institutions may not contradict the Higher Education Law.

In the written reply on August 12, 1999 Decree No.383 ”On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State”, the Cabinet of Ministers stresses that Article 15¹ of the Cabinet of Ministers Structure Law envisages that the Cabinet of Ministers may issue decrees, because in compliance with the first part of the above Article ” The Prime Minister, deputy prime Minister and ministers are entitled to issue decrees in cases established by laws”. Besides, in conformity with Article 55 of the Satversme (Constitution) ” the Cabinet of Ministers shall consist of the Prime Minister and the ministers nominated by him/her.”

The Cabinet of Ministers in its written replies expresses the viewpoint that, when issuing both disputable decrees, the envisaged procedure has been observed. Thus, when issuing August 12, 1999 Decree No. 384 ”On

Reorganization of the Latvian University and the Latvian Medicine Academy” the conclusion of the Higher Education Council has been received in accordance with the first part of Article 11 of the Higher School Law. Besides, in compliance with the Rules of Procedure of the Cabinet of Ministers, conclusions of the Ministry of Justice and Ministry of Finance have been submitted. The conclusion by the Ministry of Welfare has not been mandatory. Both the disputable decrees give an exact reference to the first part of Article 11 of the Higher School Law.

At the Court session the representative of the Cabinet of Ministers Anatolijs Melnis and the sworn advocate Agnese Skulme upheld the viewpoint that the petition was ungrounded and should be dismissed.

At the Court session the representative of the Cabinet of Ministers Anatolijs Melnis stressed that the autonomy of a higher school was not absolute. In conformity with the first part of Article 4 of the Higher School Law, the autonomy of higher schools is characterized by the division of the authority between the state institutions and the administration of the higher school. The autonomy of higher schools is restricted by the rights of other state institutions, also by the right of the Cabinet of Ministers to make a decision on reorganization and liquidation of a higher school, established by the first part of Article 11 of the Higher School Law.

The representative of the Cabinet of Ministers marked that approval of the satversme of a high school on the one hand and reorganization or liquidation of a higher school on the other, were different processes. The Higher School Law delegates the processes to different state institutions: the Saeima approves the satversmes of the universities, but the Cabinet of Ministers reorganizes and liquidates state higher educational institutions. Reorganization or liquidation of the state higher school shall be commenced with the decision of the Cabinet of Ministers- as the founder of the state higher school- on reorganization or liquidation. After that the Saeima decision to declare the satversme of the university invalid shall follow.

The representative of the Cabinet of Ministers expressed a viewpoint that the Latvian Medicine Academy was the professional higher educational institution and not the university.

The representative of the Cabinet of Ministers stressed that the real will of the legislator, when passing Article 15¹ of the Cabinet of Ministers Structure Law has been to endow the Cabinet of Ministers with the right of issuing decrees. If the Cabinet of Ministers may issue normative acts with higher legal force under the procedure envisaged in Article 81 of the Satversme, then the Cabinet of Ministers exercises the right of issuing legal acts with lower force – decrees of the Cabinet of Ministers as well. In practice the Cabinet of Ministers has issued decisions in the form of decrees and not resolutions.

The representative of the Cabinet of Ministers Anatolijs Melnis and the sworn advocate Agnese Skulme expressed their conviction that both the disputable decrees were issued, taking into consideration the procedure envisaged in the first part of Article 11 of the Higher School Law and conclusions by the Higher School Council had been added to both projects. The projects of the disputed decrees have been reviewed at the session of the Cabinet of Ministers and all the Cabinet members present could have expressed their objections. Thus, the procedure of issuing the Cabinet of Ministers legal acts- as established by the Rules of Procedure of the Cabinet of Ministers- has not been violated.

The Constitutional Court concluded:

1. The duty of the State of Latvia is to ensure education for its inhabitants. The state administrative institutions also accomplish the function of the state education. The State educational policy is implemented not only by planning and regulating the sector of education, but also by offering opportunities of obtaining education at the state educational institutions, in their number –at higher schools as well. The State higher educational institutions ensure implementation of the function of education. Duties of higher schools are established in Article 5 of the Higher School Law. In compliance with the first part of the above Article, one of the main objectives of the higher school is ” to ensure possibility to acquire knowledge, academic degrees and professional qualification in the spheres of social life, national economy, culture, health care, state administration, and other professional activities.” Higher schools founded by the State receive financing from the state budget to implement the above duties.

At the moment of issuing the disputable decrees, the Latvian Medicine Academy- in accordance with Item 17, Sub-item 7 of the Cabinet of Ministers August 5, 1997 Regulations No. 286 ”The Statutes of the Ministry of Welfare”- was subordinated to the Ministry of Welfare. The Latvian University and the Riga Aviation University – in conformity with Item 18 (Sub-items 2 and 7) of September 23, 1997 Cabinet of Ministers Regulations No. 334- were subordinated to the Ministry of Education and Science. The above higher educational institutions mainly received financing from the state budget.

Article 58 of the Satversme (Constitution) of the Republic of Latvia determines that ” the administrative institutions of the State shall be under the authority of the Cabinet”. These institutions form a hierarchic system, subordinated to the Cabinet of Ministers. The subordinated State institutions are included in the institutional system of the State administration (July 9, 1999 Decision of the Constitutional Court in case No.04-03 /99/). The Cabinet of Ministers has the right to adopt decisions binding to the State higher

educational institutions - the institutions of the state administrative system and subordinated to it.

In conformity with Article 13 of the Cabinet of Ministers Structure Law ” the Cabinet of Ministers shall discuss or resolve all issues which, in compliance with the Satversme and law, are within its competence.” In accordance with the law, the Cabinet of Ministers accomplishes different administrative functions in the sector of education. Thus, the first part of Article 11 of the Higher School Law establishes that ” the decision on reorganization or liquidation of a higher school after the proposal of the Minister of Education and Science shall be adopted by the Cabinet of Ministers. The conclusion of the Higher Educational Council shall be attached to the proposal.”

The Higher School Law endows autonomy to higher schools. In compliance with Article 4 (the second part, Item 2) of the Law, the autonomy is expressed in the right to determine its own organizational and administrative structure. The first part of Article 7 establishes that the state founded higher schools are self-governing institutions. The above norms, just like other legal norms, which determine self-governance of higher schools, may not be interpreted separately from other legal norms of the Higher School Law. They shall be interpreted in total, taking into consideration that the objective of this Law is to regulate co-operation of higher schools and the state institutions, so that the autonomy of the higher schools is co-ordinated with the interests of the society and the state.

In compliance with the first part of Article 4 of the Higher School Law, ” the autonomy of higher schools are characterized by the division of the authority between the state institutions and the administration of higher school, as well as between the administration of higher school and academic personnel”. Although the State has to respect the autonomy of higher schools and take into account the self-governance principle, allowing higher schools to realize the duties envisaged by the Higher School Law, the autonomy of higher schools is not absolute and unlimited. The main objective of the autonomy of higher schools is to ensure academic freedom at higher schools. The Higher educational institutions, when realizing the autonomy as envisaged in the Higher School Law, shall develop co-operation with the society and the state institutions. The right to determine its organizational and administrative structure, as well as status of a state-governing institution can be realized as far, as it is not restricted by the competence of authorized by the Higher School Law state institutions: the Saeima, the Cabinet of Ministers, the Ministry of Education and Science and the Higher School Council. The highest executive power- the Cabinet of Ministers affirms the rectors of the higher educational institutions and approves the Satversmes of all higher schools with an exception of universities. The law entitles the Cabinet with the right of founding State higher schools, reorganizing and liquidating them.

The higher school realizes its self-governing rights and determines its own organizational and administrative structure, but realization of the above rights may not be applied to the process of reorganization and liquidation of a higher school. The Cabinet of Ministers and not the higher school itself is entitled to make a decision about it.

Thus, in compliance with the first part of Article 11 of the Higher School Law, the Cabinet of Ministers had the right to make a decision on reorganization of the Latvian University and liquidation of the Riga Aviation University.

2. In conformity with Article 15¹ of the Cabinet of Ministers Structure Law "the Prime Minister, Deputy Prime Ministers and ministers are entitled to issue decrees in cases established by laws and the Cabinet of Ministers regulations. A decree is an administrative act of individual appliance regarding the specific state institutions and officials".

Although, when analyzing the textual expression of this legal norm, one may conclude, that the words "the Cabinet of Ministers" has not been included, however it does not mean that the Cabinet of Ministers is not entitled to issue decrees. To ascertain the real meaning of the legal norm one cannot literally take the law into consideration. One has to clarify the will of the legislator. It can be done with the help of the verbatim report of the Saeima May 23, 1996 session. The draft of the Amendments to the Law "On the Renewal of April 1, 1925 Law "The Structure of the Cabinet of Ministers"" was reviewed at it. From the verbatim report it is clearly seen, that the will of the legislator has not been to entitle the Prime Minister, the Deputies of the Prime Minister and the ministers with the right of issuing decrees, at the same time not allowing the whole Cabinet to do it. The deputy Jānis Lagzdīņš, when substantiating the necessity to supplement the Law with Article 15¹ in the present wording, stated at the Saeima session "Since the times of the 5th. Saeima, since the time of Birkav's government and the renewal of the Law "On the Structure of the Cabinet of Ministers", the Cabinet of Ministers has issued regulations, instructions and also decrees. If we attentively study the effective Law "The Cabinet of Ministers Structure", we see that this Law does not entitle the Cabinet of Ministers with the right of adopting a normative act (evidently, the deputy has meant the administrative act), namely, a decree. But in practice the Cabinet of Ministers and the Prime Minister very often has to pass the above act, i.e. when nominating or dismissing an official, when establishing a state institution or commission etc. There is quite a number of different individual cases, when there is a necessity to assign the state officials and institutions to fulfil certain duties. In the above cases both- the Cabinet of Ministers and the Prime Minister have issued decrees" (the Verbatim Report of the 6th. Saeima May 23, 1996 session. "Latvijas Vēstnesis", May 30, 1996, No.93, page 3).

When adopting the above Amendments to the Cabinet of Ministers Structure Law, the Saeima accepted the existing practice, in accordance with which the Cabinet of Ministers might issue not only regulations and instructions but also decrees. The Saeima fixed the right of the Cabinet of Ministers to issue decrees as individual administrative acts, referring to particular state institutions and officials. As is seen from the verbatim report, the main objective of the Amendments to the Law was to determine the above rights to the Cabinet of Ministers in total, and not only to its members.

Besides, when interpreting Article 15¹ of the Cabinet of Ministers Structure Law systematically, one may consider that the Cabinet of Ministers was entitled to issue decrees. In compliance with Article 55 of the Satversme "The Cabinet of Ministers shall be composed of the Prime Minister and the Ministers chosen by the Prime Minister". 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.

The fourth and fifth parts of Article 6 of 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" mention decrees of the Cabinet of Ministers. Thus, the Law accepts the right of the Cabinet of Ministers to issue decrees.

On June 1, 1996 Article 15¹ of the Cabinet of Ministers Structure Law took effect. Simultaneously, on the same day the Cabinet of Ministers April 30, 1996 Regulations No. 160 "Rules of Procedure of the Cabinet of Ministers", issued in conformity with Article 24 of the Cabinet of Ministers Structure Law, took effect. In compliance with Items 6, 7 and 100 of the Regulations, the Cabinet of Ministers shall issue decrees as administrative acts.

Ungrounded is the viewpoint of the sworn advocate Aleksandrs Ogurcovs, that the decisions of the Cabinet of Ministers on reorganization and liquidation of higher schools shall be adopted only as decisions by the Cabinet of Ministers. In accordance with Article 6 of 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 become Valid" and taking into consideration the Rules of Procedure of the Cabinet of Ministers, decisions of the Cabinet of Ministers may be adopted (drawn up) as regulations, instructions, recommendations, extracts from the session protocol as well as decrees. In its practice since January 1995, the Cabinet of Ministers does not adopt legal acts as decisions of the Cabinet of Ministers.

To realize competence determined in the Higher School Law – to make a decision on liquidation and reorganization of a higher school, the Cabinet of Ministers had to adopt the decision in the adequate form. As this decision is the

administrative act of individual nature, referring only to particular ministries and state institutions subordinated to the Ministry of Education and Science and the Ministry of Welfare (namely- to the Latvian Medicine Academy, the Latvian University and the Riga Aviation University) then it was correctly and in compliance with the law adopted as the decree.

Thus, Article 15¹ of the Cabinet of Ministers Structure Law envisages the right of the Cabinet of Ministers to issue decrees in cases established by laws and the Cabinet of Ministers regulations.

3. The Cabinet of Ministers, when issuing the disputable decrees, had to take into consideration the first part of Article 11 of the Higher School Law, determining that the conclusion of the Higher Educational Council shall be attached to the proposal of the Minister of Education and Science to reorganize or liquidate the higher school. Besides, the procedure of adoption of legal acts, regulated by the Rules of Procedure of the Cabinet of Ministers had to be observed.

When studying the documents, attached to the projects of the disputable decrees, it can be seen that the Minister of Education and Science Silva Golde has forwarded both the disputed decrees (July 26,1999 the Ministry of Education and Science letter No.1-5-304, pages 79 and 80 of the case; and August 6, 1999 letter No. 1-5-337, page 56 of the case).

In the supplement to the letter No. 1-5-304, to which the project of the Cabinet of Minister Decree "On Liquidation of the Riga Aviation University" was attached, on August 6,1999 the Minister of Education and Science Silva Golde submitted conclusions by the Higher School Council and the Ministries of Finance and Justice on the project (Ministry of Education and Science August 6,1999 letter No. 1-5-336, page 71 of the case).

In addition to the Education of Ministry letter No. 1-5-336, to which the Cabinet of Ministers Decree project "On Reorganization of the Latvian University and the Latvian Medicine Academy", the conclusion on reorganization of the Latvian University and the Latvian Medicine Academy by the Higher Education Council was submitted to the State Chancellery. In accordance with March 8, 2000 State Chancellery letter No. 90/833-k/1 (page 104 of the case), the conclusion by the Higher Education Council was received on the day of the session of the Cabinet of Ministers, at the time of acquisition of the documents to be reviewed. Although the State Chancellery did not register the conclusion, it was included in the compilation of documents and the members of the Cabinet of Ministers, before making the decision, had an opportunity to acquaint themselves with it.

Ungrounded is the viewpoint of the petitioners that the procedure of submitting the Higher School Council conclusion has been violated. The objective of the first part of Article 11 of the Higher School Law – to enable the members of the Cabinet of Ministers to find out the viewpoint of the Higher School Council – has been attained. The fact, that –when submitting the projects of the disputable decrees to the State Chancellery- the conclusions of the Higher School Council had not been attached to the letters by the Minister, but were submitted later, could not influence the decision of the members of the Cabinet of Ministers on this issue.

The Higher School Law has determined no special demands as to the contents and form of the Higher School Council conclusions. The Council itself is responsible for drawing up the documents (addressee, signatory, No. of the decision etc.). Therefore, August 6, 1999 documents No.75 (page 72 of the case) and No.79 (page 58 of the case) shall be considered as decisions of the Higher School Council in the sense of the first part of Article 11 of the Higher School Law.

As the conclusion of the Higher School Council on reorganization of the Latvian University and the Latvian Medicine Academy has not been registered at the State Chancellery, Item 221 of April 23, 1996 Cabinet of Ministers Regulations No. 154 "The Procedure of Drafting and Drawing up Documents" has been violated. In compliance with the above Item, "a note about the receipt of the document or a note about the receipt and registration of the document shall be marked on the right side of the bottom of the page". Item 12 of the Rules of Procedure of the Cabinet of Ministers, in conformity with which " legal acts to be reviewed at the Cabinet of Ministers shall be registered at the State Chancellery" has also been violated. However, violation of these legal norms cannot serve as a sufficient reason to declare August 12 Cabinet of Ministers Decree No.384 "On Reorganization of the Latvian University and the Latvian Medicine Academy" null and void. The fact, that the document was not registered did not prevent the Cabinet of Ministers members to acquaint themselves with the above conclusion and make the decision on reorganization of the Latvian University and the Latvian Medicine Academy.

In accordance with Item 8 of the Rules of Procedure of the Cabinet of Ministers " decrees causing inconvenience to the addressee, containing prohibitions and restrictions shall be issued only in compliance with the Satversme, laws or regulations of the Cabinet of Ministers. When issuing the above Regulations, reference to the respective legal norm shall be made". The Cabinet of Ministers issued the disputable decrees

on the basis of the first part of Article 11 of the Higher School Law, including in the text an exact reference to the above Article of the Law.

The Prime Minister had declared the review of the disputed decree projects to be the subjects of the Cabinet of Ministers. As can be seen from the papers on the disputable decrees, prepared by the State Chancellery, the former Prime Minister Andris Šķēle in his August 10, 1999 Resolutions No. 90/3186-k (page 68 of the case) and No. 90/3336-k (page 52 of the case) has named them like this.

Item 71 of the Rules of Procedure of the Cabinet of Ministers establishes that the Prime Minister is entitled to promulgate any issue as the subject of the Cabinet of Ministers. The Rules give the explanation of the term "the subject of the Cabinet of Ministers": "the subject of the Cabinet of Ministers –the issue, which the Prime Minister at any time, but the deputy of the Prime Minister, or a minister only after discussing the issue at the Cabinet of Ministers Committee meeting, promulgate as the issue to be reviewed and settled on its merit at the Cabinet of Ministers session." Thus- the Prime Minister has a wide range of authority – at any time to promulgate any issue the subject of the Cabinet of Ministers, even the issue, which has not been discussed at the meeting of the Secretaries of the State and the Committee of the Cabinet of Ministers.

Item 23, Sub-item 1 of the Rules of Procedure of the Cabinet of Ministers determines that "the conclusions from the Ministry of Finance and the Ministry of Justice as well as from the European Integration Bureau (if the particular legal act is connected with integration of Latvia into the European Community) are mandatory." However, Item 23 of the Rules refers only to the meeting of the State Secretaries. If legal acts are discussed at the meeting of the State Secretaries, they shall be forwarded to the Ministry of Justice and the Ministry of Finance for coordination. On the other hand, in compliance with the effective Rules, issues, reviewed as the subjects of the Cabinet of Ministers, shall not always be discussed at the meetings of the State Secretaries. Therefore Item 23, Sub-item 1 of the Rules of Procedure of the Cabinet of Ministers does not refer to the above issues.

As the disputable decrees had to be reviewed on their merit by the Cabinet of Ministers (as the subjects of the Cabinet of Ministers), then the fact whether the conclusions of the ministries had been attached to them or not, and whether their contents was positive or negative, could not affect the validity of the disputable decrees. The ministers had to make a decision on an important to the State issue. Before making the above decision, the ministers had the opportunity to widely discuss it, because Item 84 of the Rules of Procedure of the Cabinet of Ministers

envisages that, when discussing the project of the legal act, which has been declared the subject of the Cabinet of Ministers, the debate on the project shall take place.

Ungrounded is the viewpoint of the sworn advocate Aleksandrs Ogurcovs. According to him, Item 16 of the Rules of Procedure of the Cabinet of Ministers, determining that the original of the project of the legal act shall be signed by the State Secretary and the head of the legal department of the ministry has not been observed. Studying the documents, attached to the case, it can be seen that the project "On Reorganization of the Latvian University and the Latvian Medicine Academy" was signed by the State Secretary of the Ministry of Education and Science Guntis Tomsons and the Acting Assistant of the Director of the Administrative Department of the Ministry Sandra Sindiki (page 53 of the case). In its turn, the project of the Decree "On Liquidation of the Riga Aviation University" was signed by the State Secretary Guntis Tomsons and the Acting Assistant of the Director of the Administrative Department Gatis Ozoliņš (pages 69 and 70 of the case).

Thus the Cabinet of Ministers, when issuing the disputable decrees, has observed the procedure of adopting the decision on re-organization or liquidation of a higher educational institution, which has been established by the Higher School Law (the first part of Article 110). The Cabinet of Ministers has not so vitally violated the procedure, envisaged in the Cabinet of Ministers April 30, 1996 Regulations No. 160 "The Rules of Procedure of the Cabinet of Ministers" that the Decrees should be declared null and void.

4. The Supreme Council February 23, 1993 Decision "On Approval of the Latvian Medicine Academy Satversme" and the Supreme Council July 7, 1992 Decision "On Approval of the Riga Aviation University Satversme" are individual and not normative legal acts. The Satversmes of the Latvian Medicine Academy and the Riga Aviation University have been accepted as internal normative legal acts by the above decrees.

In conformity with Article 16, Item 4 of the Constitutional Court Law, the Constitutional Court reviews cases, regarding compliance with Constitution or other laws of the acts of the Cabinet of Ministers. The Constitutional Court does not review cases, regarding compliance with the individual decisions and internal normative acts of the Supreme Council, which have been accepted by the above decisions of the Supreme Council.

It is not within the competence of the Constitutional Court to review compliance of the disputable decrees with the Supreme Council February 23, 1993 Decision "On Approval of the Latvian Medicine Academy Satversme", July 7, 1992 Supreme Council Decision "On Approval of the Riga Aviation University Satversme" and correspondingly with the Satversmes of the Latvian Medicine Academy and the Riga Aviation University, approved by these decisions.

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

DECIDED:

To declare the Cabinet of Ministers August 12, 1999 Decree No.384 "On Reorganization of the Latvian University and the Latvian Medicine Academy " and the Cabinet of Ministers August 12, 1999 Decree No. 383 "On Liquidation of the Riga Aviation University as the Higher Educational Institution Founded by the State" as **conformable** with the Higher School Law and Article 15¹ of the Cabinet of Ministers Structure Law.

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

The Judgement was announced in Riga on May 10, 2000.

The Chairman of the Court session	Romāns Apsītis
Judge of the Constitutional Court	Anita Ušacka
Judge of the Constitutional Court	Ilma Čepāne