



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## DECISION in the name of the Republic of Latvia

Riga, October 1, 1999

in case No. 03-05 (99)

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session A.Endziņš, the judges R.Apsītis, I.Čepāne, I.Skultāne and A.Ušacka, with the secretary of the Court session L.Vīnkalna

in the presence of the expert of the Department of Communications of the Ministry of Transportation Ilze Kalniņa – the authorised representative of the applicant i.e. the Cabinet of Ministers

and the authorised representative of the Saeima – the institution which issued the disputable act – the sworn advocate Ziedonis Ūdris,

under Article 85 set by the Satversme (Constitution) as well as Article 16 (Item 3) and the first Part of Article 17 of the Constitutional Court Law

in a public hearing on September 20, 1999 in Riga reviewed the case

**”On Conformity of Items 1 and 4 of the Saeima April 29, 1999 Resolution on Telecommunications Tariff Council with Articles 1 and 57 of the Satversme (Constitution) of the Republic of Latvia and Other Laws”.**

The Constitutional Court **established:**

On January 21, 1999 the Saeima established a Parliamentary Investigation Committee (henceforth –the Investigation Committee) with an objective of analysing the implementation of the Agreement between the Government of the Republic of Latvia and ”Tilts Communication” as well as evaluating the SIA ”Lattelekom” tariff policy and conformity of performance of the authorised

representatives of the Telecommunications Tariff Council with the requirements of the Law "On Telecommunications".

On March 31, 1999 the above committee submitted the report "On Analysis of the Tariff Policy and Conformity of Performance of the Authorised Representatives of the Telecommunications Tariff Council with the Requirements of the Law "On Telecommunications"" to the Saeima Presidium.

On April 8, 1999 a Saeima draft resolution in the form of an independent motion, elaborated by the Saeima Investigation Committee, was submitted. On April 12 a new variant of the draft was submitted.

The Saeima forwarded the above independent motion to the Economic, Agricultural and Regional Development Committee and to the Legal Affairs Committee. Each Committee elaborated and submitted its alternative Saeima draft resolution.

In its 29 April, 1999 sitting the Saeima decided to choose the variant elaborated by the Economic, Agricultural and Regional Development Committee and adopted the Resolution on the Telecommunications Tariff Council (henceforth- the disputable act). The Chairman of the Saeima J.Straume- under the second part of Article 21 set by Rules of Procedure of the Saeima- promulgated the decision in the newspaper "Latvijas Vēstnesis".

Items 1 and 4 of the above Saeima incorporate the following text:

"1. On the grounds of violation of the Law "On Telecommunications" and Resolution on Telecommunications Tariff Council stated by the Parliamentary Investigation Committee, to obligate the Cabinet of Ministers to dismiss the members of the Telecommunications Tariff Council and in a month to establish a new Telecommunications Tariff Council as provided for in the Law "On Telecommunications".

4. On the basis of the third Part of Article 11 and the third Part of Article 23 of the Law "On Telecommunications" and by taking into consideration Item 6.4 of the Telecommunications Tariff Council Regulations –to assign the newly established Telecommunications Tariff Council with the task of revising decisions on tariffs adopted by the former Telecommunications Tariff Council.

**The applicant** holds that Items 1 and 4 of the disputable act do not comply with:

- 1) Articles 1 and 57 of the Satversme (Constitution) of the Republic of Latvia (henceforth- the Satversme);
- 2) Article 13 of the Law on the Structure of the Cabinet of Ministers;
- 3) Article 16 of the Law on the Structure of the Ministries;

- 4) Article 9 of the Law "On Telecommunications";
- 5) Article 8 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".

The applicant petitions to declare Items 1 and 4 of the disputable act null and void from the moment of their adoption.

In the application it is stressed that pursuant to Article 1 of the Satversme "Latvia is an independent democratic republic", a statement which indicates that there exists separation of power in Latvia. Thus- the Cabinet of Ministers is responsible for its policy before the Saeima and the basis of the parliamentary responsibility lies in equal relations between the Parliament and the Government. The Satversme does not bestow upon the Saeima special privileges of general supervision. The Government, when exercising its competence, shall be independent and autonomous.

In the application it is pointed out that in accordance with Article 57 of the Satversme "the relations between state institutions shall be as provided for by law". Article 13 of the Law "The Structure of the Cabinet of Ministers" determines that "the Cabinet of Ministers shall discuss or resolve all issues which, in compliance with the Satversme and law, are within its competence." And it means that the Saeima without a legal reason shall not restrict the activities of the Cabinet and establish relations between the Cabinet of Ministers and the Telecommunications Tariff Council (henceforth – the Tariff Council) by Resolutions.

The Cabinet of Ministers holds that Article 9 of the Law "On Telecommunications" clearly defines that the Tariff Council shall be appointed by the Republic of Latvia Government, however dissolving of the Council before the established five year period has not been envisaged, if not determined otherwise by other normative acts.

The applicant stresses that in compliance with the Regulations of the Ministry of Transportation the Tariff Council is a state institution under the subordination of the Ministry of Transportation. In compliance with Article 16 of the Law on the Structure of Ministries, it performs the functions determined by the law individually and is responsible for its performance. Thus Item 4 of the disputable act, envisaging assignments of the newly established Tariff Council, is to be regarded as unlawful.

The Cabinet of Ministers expresses the viewpoint that decisions of the Tariff Council are administrative acts and in conformity with Item 88 of the Cabinet of Ministers June 13, 1995 Regulations No. 154 "Procedural Regulations of Administrative Acts" an unlawful administrative act in favour of addressee may be annulled only in the interests of the State or society. In the above case

the administrative act may not be annulled with a retroactive date and ex post facto.

The applicant stresses that the Saeima decision, which has a lower legal force does not comply with legal acts of higher legal force – the Satversme and laws. Thus the Saeima, when obligating the Cabinet of Ministers to dissolve the Tariff Council, has violated the principle of rule of law fixed also 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”.

At the Court session the representative of the submitter of application sustained the claim.

In addition to the legal motivation included in the application she pointed out that the Saeima exercised certain functions of control. To her mind the Saeima could control general administrative activities whenever the performance of the Government had given cause for it. This function is usually accomplished in questions, interpellations and performance of investigation committees. The right of the Saeima control is determined in Articles 26 and 27 of the Satversme. However, neither the Satversme nor other laws envisage the right of the Saeima to assign tasks to the Cabinet of Ministers. Thus, the Government performs the function of administration independently as long as it enjoys the confidence of the Saeima.

Referring to the principle of separation of power, the representative of the Cabinet of Ministers stressed that there were no legal acts determining subordination of the Cabinet of Ministers to the Saeima. The Government is as important the power as the judiciary power and the Saeima may regulate its performance only by legislation and not by the Saeima decisions.

She admitted that – as to any other state institution - the laws were binding also to Telecommunications Tariff Council.

Neither the application nor the legal motivation expressed at the Court session by the representative of the applicant, substantiate the claim to declare the disputable act null and void from the moment of its adoption .

The **Saeima** in its written reply declares that the disputable act does not contradict the Satversme and other laws and requests to regard the petition of the Cabinet of Ministers as ungrounded and reject it.

It is stressed in the written reply that the disputable act has been adopted on the grounds of the conclusions drawn by the Saeima Investigation Committee established on January 21, 1999. The Saeima appointed the Parliamentary

Investigation Committee to realise the parliamentary control under the constitutional procedure.

The viewpoint that the status of the Tariff Council determined in Article 9 of the Law "On Telecommunications" may not be interpreted as the one giving the right of not observing the requirements of the law, is expressed in the written reply.

It is pointed out that when evaluating the conformity of the performance of the representatives of the Tariff Council with the requirements of the Law "On Telecommunications", the Investigation Committee has established several deviations from the above Law. As the result the Saeima draft Resolution has been elaborated.

The written reply also includes an explanation that the Saeima -with its disputable act - had expressed its attitude and acquainted the Government with the fact that the performance of the Tariff Council did not always comply with the requirements of the Law.

At the Court session the Representative of the Saeima sustained the claim that the claim was ungrounded and should be rejected. He declared that in form the disputable act complied with the Rules of Procedure of the Saeima (henceforth – the Rules of Procedure) but as to the contents – to his mind it had been a political appeal to observe the law.

The Saeima representative stressed that the Saeima, when establishing the Investigation Committee, had acted in compliance with Article 26 of the Satversme, in its turn the Investigation Committee had prepared and submitted the report in accordance with Chapter VI of the Rules of Procedure. The Investigation Committee, when submitting the independent motion – the Saeima Draft Resolution –acted in conformity with Item 2 of the first Part and Item 3 of the second Part (evidently the third Part was meant) of Article 117 and Article 176 of the Rules of Procedure. The above independent motion was forwarded to the Saeima Economic, Agricultural and Regional Committee and to the Legal Affairs Committee for review. Alternative decisions of both committees were elaborated in conformity with Article 118 of the Rules of Procedure. Review of the above independent motions and adoption of the disputable act to their mind is in compliance with the Rules of Procedure.

The representative of the Saeima denied that the disputable act could be considered a normative act. In an answer to the question whether the Cabinet of Ministers had to observe the disputed Items, he agreed to the viewpoint expressed at the Saeima session by the Chairman of the Saeima Legal Affairs Committee L.Muciņš "the Cabinet of Ministers may not take into consideration Items like these and will not do it".

The Saeima representative expressed the viewpoint that, in conformity with the Rules of Procedure, the Saeima may adopt resolutions which are not of a normative nature. Evaluating several resolutions adopted by the Saeima from 1994 – 1996, he expressed a viewpoint that there existed a parliamentary tradition to assign different tasks to the Government in the above form.

The Saeima representative emphasised that the disputable act was a political decision. It had been adopted to accomplish the Saeima controlling function. With the above decision the Saeima has expressed its attitude and asked the Cabinet to pay attention to the fact that there were deviations from the demands of the law in the performance of the Tariff Council. To their mind the disputable act was an appeal to observe the law. By adopting the above decision, the Saeima has acted democratically and has carried out the will of the people. They hold that the activity complies with the notion of the democratic republic expressed in Article 1 of the Satversme.

The Saeima representative reminded that in compliance with Articles 3 and 10 of the Law "On Telecommunications" the Cabinet of Ministers and the Minister of Transportation were authorised to carry out the state policy in the field of telecommunications. Not only the law but also the Saeima as a political institution may determine the above policy. Legislation is the main function of the Saeima but not the only one.

The Saeima representative stressed that the Tariff Council was independent but only as far as law did not limit its independence. The appeal to observe the law to their mind could not be regarded as the violation of the principle of independence. He expressed the viewpoint that the Saeima was not authorised to vacate the acts by the Tariff Council but by a political decision it could ask the institution to observe the law.

The Saeima representative drew attention to the fact that reference of the applicant to Article 8 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" was ungrounded as the above Article referred to normative acts but the disputable act was not a normative act.

The Constitutional Court **concluded**:

1. Article 1 of the Satversme determines that "Latvia is an independent democratic republic". Several principles of a law-based state, including the principle of separation of power, follow from the Article.

The principle of separation of power manifests itself in division of the state power into legislative, executive and judicial power, which are being realised by independent and autonomous institutions. The above

principle guarantees balance and mutual control among them. It favours moderation of power.

However, "in Western democracies the principle of separation of power is effective, but it is not implemented in strict conformity with an ideally typical model. Generally only the independence of judges from interference of the executive power is strictly protected. Yet the scheme of the division of power in the historical aspect does not exclude certain breach of the principal limits... Breaking of the above scheme does not mean that one power is just trying to influence another one – as in parliamentary control – but it also happens by one power accomplishing the functions of the other one... However, in spite of crossing of power, breakouts and disappearance of bounds, the main objective of the principle of separation of power is achieved if the state institutions of different groups effectively control one another". (R.Cepelius. A General Course on a State. Riga, 1998, pages 244 – 245).

Latvia is a parliamentary republic and, in compliance with Article 59 of the Satversme, the Government is accountable to the Saeima.

"The basis of the parliamentary responsibility is equal relations between the Parliament and the Government. If one institution had predominance over the other, the parliamentary responsibility institution would not be able to work efficiently and would be degraded to a simple formality. The viewpoint that the government is subordinated to the parliament and shall be regarded as its executive institution is wrong..."(D.A.Lēbers, I.Bišers. The Cabinet of Ministers. Riga, 1998, pages 111-112).

However, not long after the Satversme took effect the viewpoint was expressed that the Saeima shall realise a regulative function as well, because "in parliamentary states the government is dependent on the parliament and shall be accountable to it. Therefore it is only logical that the parliament not only controls the government but also puts forward both leading implications on general political directions and performance of separate departments....Certainly, in any case and at any time the parliament may adopt specific resolutions with more or less expressed instructions to the government." (Dišlers. Institutions of State Power and their Functions. Riga, 1925, page 90). This viewpoint became apparent in several resolutions of the Administrative Department of the Senate (see Decisions of the Administrative Department of the Senate. Riga, 1926, No. 32 and 43).

The principle of separation of power resulting from the notion of a democratic republic included in Article 1 of the Satversme shall not be perceived dogmatically and formally. It has to be in proportion with the objective of preventing centralisation of power in one institution or official.

The fact that the Saeima with its decision has assigned a task to the Cabinet of Ministers does not contradict Article 1 of the Satversme as long as relations of mutual control and moderation are in balance and other principles of a law-based state are observed.

One of the principles – rule of law determines that the law and rights are binding to every state institution as well as to the legislator himself. Persons, exercising the power of legislation after they had assembled and passed laws under a certain procedure are subject to the effect of the laws. (See Two Tractates on Ruling. J.Lock. Collected Works in 3 volumes. Volume 3. Moscow, 1988, page 347).

In a democratic republic the parliament has to observe the Constitution and other laws, including those the parliament has passed itself.

**Thus the Saeima is authorised to assign binding tasks to the Cabinet of Ministers, however the assignments shall not contradict the law.**

2. The statement of the Saeima representative that Article 26 of the Satversme establishes the right of the Saeima to adopt the disputable act is ungrounded.

”The Saeima may accomplish control on general administrative performance at any time when the government has given the cause of doing it. The above function of control is realised with the help of: a) questions, b) requests, c) activities of the investigation committees.” (Dišlers. The State Institutions and their Functions. Riga, 1925, page 82).

The right of the minority of the Saeima of establishing investigation committees is guaranteed by Article 26 of the Satversme, determining that ”the Saeima shall appoint parliamentary investigation committees for specified matters if not less than one third of its members request it.” During the process of the second reading of the Satversme draft, the deputy F.Cielēns proposed to express this Article in the above wording, stating that ”such investigation committees are of great importance in the life of the state and society, as the committees are among institutions which shall realise control over activities of the executive power.” (Verbatim report of the Assembly of the Satversme of Latvia.Riga, 1921, Number 17, page 1657).

The norm included in Article 26 of the Satversme determines that the investigation committees:

- 1) shall be appointed for specified matters,

- 2) shall be appointed if not less than one-third of its members request it,
- 3) the rights and obligations in total are characterised by the notion "parliamentary investigation committees".

Article 26 of the Satversme establishes rights of the investigation committee – the institution with the help of which (through which) the right of the parliament to control the performance of the executive power is realised. However, Article 26 of the Satversme does not determine what decisions, on grounds of results of the activity of the investigation committees, the Saeima may adopt.

The investigation committee is "parliamentary" and the Saeima may make use of the results of its activities to adopt "parliamentary" acts – amendments to the existing laws or new laws, to express non-confidence to the whole Cabinet of Ministers, to the Prime Minister or one minister, to express a declared attitude to this or that problem etc. When adopting decisions based on results of activity of the investigation committee, the Saeima shall observe the Satversme, the Rules of Procedure of the Saeima and other laws.

**Thus, when realising the controlling function as well as any other function, the Saeima shall act in compliance with the Satversme and the laws. Article 26 of the Satversme shall be interpreted in connection with the rule of law, fixed in the Satversme.**

3. After renewal of independence in Latvia, manifestation of the parliamentary regulative function has experienced several stages. The concept, predominating in the Soviet period, that the Council of Ministers was subordinated to the Supreme Soviet could be observed in relations between the Parliament of the Republic of Latvia (the Supreme Council) and the Government (the Council of Ministers) during the transitional period. The Resolutions of the Supreme Council envisaged different assignments to the government and its institutions, as well as revoked Government acts or their parts. Repeatedly items of normative nature, which had no force of law, were incorporated in Resolutions of the Supreme Council.

After assembling of the 5<sup>th</sup>. Saeima and establishing of the Cabinet of Ministers, the Parliament proceeded doing the above with the help of Resolutions, even though the Satversme, the Rules of Procedure and the Law on the Structure of the Cabinet of Ministers had taken effect. To prevent it, in May 1996 Amendments to the Rules of Procedure were elaborated and the third part of Article 117 reads that " except in the cases provided by law, it is

not permitted to include Paragraphs of normative nature in the independent motion.”

The viewpoint of the representatives of the Saeima and the Cabinet of Ministers that the disputable act does not contain Paragraphs of normative nature is well founded. However the fact that the disputable act is adopted under the procedure envisaged by the law does not mean that its contents may contradict the law.

**”Prohibition to incorporate Paragraphs of normative nature in the independent motion, included in the third part of Article 117 of the Rules of Procedure, shall be interpreted in compliance with the principle of the rule of law. Thus, it is not permitted to include Paragraphs, which do not comply with the law, in the independent motion.”**

4. The Saeima may adopt acts- independent motions- of different kind, even those that formulate attitude or viewpoint of the Saeima as a collective institution. The acts, formulating the attitude of the Saeima may be directed to both – a definite and indefinite scope of subjects. However, the acts may not be directed to creation, amendment, establishment or termination of rights, or assignment of fulfilling duties.

In its turn, Item 1 of the disputable act, which incorporates the formulation ”obligate to abrogate” and Item 4 of the disputable act, which includes the formulation ”obligate to revise” are directed to assigning the Cabinet of Ministers and the Tariff Council to fulfil a duty.

The statement of the Saeima representative that the word ”pārskatīt” (to revise) has been used in the meaning of ”to draw attention to, to appeal to” is ungrounded as the word ”pārskatīt” does not have the above meaning.

The word ”pārskatīt” in the Latvian literary language is used mostly in two meanings: ”to look through” and ”to glance over” (The Dictionary of the Latvian Language, Riga, 1998, page 585). However, it has been used in the third meaning as well, namely, ”to go over again/anew, to revise” (The Dictionary of the Latvian Literary Language, Riga, 1986, volume 6, page 394).

The fact that the Saeima has used the formulation ”uzdot pārskatīt” in the meaning of ”oblige to revise” can be witnessed in phrases of several deputies when discussing the draft of the disputable act at the Saeima April 29, 1999 session. Thus, the Chairperson of the Investigation Committee I.Ūdre expressed the viewpoint that ”by the draft the Saeima deputies demanded to put the activities of the Telecommunications Tariff Council in order, to increase the responsibility for performance of the Members of the Telecommunications Tariff Council and to classify tariffs in conformity with the law.” The Deputy of the Chairperson of the Investigation Committee E.Baldzēns also stressed

that "without replacement of the Telecommunications Tariff Council nothing will ever change in the tariff policy; neither from the viewpoint of legality, nor from the viewpoint of consumer protection."

**Thus, the disputable act is directed to assigning of duties both to the Cabinet of Ministers and to the Tariff Council and the viewpoint of the Saeima representative that the disputable act expressed only the attitude of the Saeima to the performance of the Tariff Council is ungrounded.**

5. The viewpoint of the Cabinet of Ministers that without a legal reason the Saeima may not limit the administrative activities of the Cabinet and with the resolution determine relations between the Cabinet of Ministers and the Tariff Council is well founded. In conformity with Article 57 of the Satversme "the relations between State institutions shall be as provided by law". In accordance with Article 13 of the Law "The Structure of the Cabinet of Ministers" "the Cabinet of Ministers shall discuss or resolve all issues which, in compliance with the Satversme and law, are within its competence." The Law "On Telecommunications" determines the right of the Cabinet of Ministers to establish the Tariff Council. Article 9 of the Law envisages that "the Telecommunications Tariff Council shall be appointed by the Republic of Latvia Government for a period of five years upon recommendation of the Minister of Transportation and shall be an independent body composed of seven experts".

Both participants of the case reasonably hold that the above Article fixes the principle of independence of the Tariff Council and that in its activity the Tariff Council shall observe the laws. It is independent only as far as the law does not restrict its performance. At the same time the viewpoints of the participants of the case differ on the issue who and how one is competent to act if the doubt arises whether the Tariff Council observes the law.

Grounded is the viewpoint of the Cabinet of Ministers that in compliance with February 17, 1998 Cabinet of Ministers Regulations No. 53 "Statute of the Ministry of Transportation", the Tariff Council is an administrative State institution under supervision of the Ministry of Transportation, which – in compliance with Article 16 of the Law "On the Structure of Ministries- performs individually the functions assigned by the law and is responsible for its performance.

An unlawful act, adopted by the institution subordinated to the Cabinet of Ministers, may be abrogated under the procedure established by law. If the Saeima holds that the act of the above institution is illegal, it may submit a question or an interpellation, it may resolve to express a vote of no confidence to the Cabinet of Ministers, the Prime Minister or an individual minister, it may submit an application to initiate a case at the Constitutional Court. Thus, the

Saeima may estimate compliance of the performance and acts of the Tariff Council with the law. But it may not pass a law, binding to the Cabinet of Ministers, on dissolution of the Tariff Council, it may not assign the Tariff Council with the task of revising an act.

Ungrounded is the viewpoint of the Saeima representative that the right of the Cabinet of Ministers to establish the Tariff Council also means that it is authorised to change the body of the Tariff Council at any moment. As Article 9 of the Law "On Telecommunications" determines that the Tariff Council shall be appointed for a period of five years, the Cabinet of Ministers may not change it without a legal reason.

The valid Law "On Telecommunications" does not envisage dissolution of the Tariff Council. At the Saeima session, discussing the disputable act, the Chairman of the Saeima Legal Affairs Committee L.Muciņš reasonably stressed that Saeima was competent to determine it by adopting amendments to the law, but, if it had not been done, the Saeima was competent neither to reach the decision on dissolution of the Tariff Council nor assign the task of doing it to the Cabinet of Ministers.

**Thus, Items 1 and 4 of the disputable act do not comply with Article 57 of the Satversme, Article 13 of the Law "The Structure of the Cabinet of Ministers", Article 16 of the Law "On the Structure of Ministries" and Article 9 of the Law "On Telecommunications".**

6. Ungrounded is the viewpoint of the submitter of application that the disputable act does not comply with Article 8 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". The first part of the Article establishes that "if a discrepancy has been ascertained between normative acts of different legal force, the normative act of higher legal force shall be in effect". As the disputable act is not a normative act, the above Article shall not be referred to.

However, the Cabinet of Ministers refers to the principle of rule of law and that has been fixed not only in the above law. It results from Article 1 of the Satversme. When passing the disputable act the Saeima has violated the above principle as Items 1 and 4 of the act do not comply with Article 57 of the Satversme, Article 13 of the Law "The Structure of the Cabinet of Ministers", Article 16 of the Law "On the Structure of Ministries" and Article 9 of the Law "On Telecommunications".

**Thus Items 1 and 4 of the disputable act contradict Article 1 of the Satversme.**

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

**The Constitutional Court**

**DECIDED:**

To declare Items 1 and 4 of the Saeima April 29, 1999 Resolution on the Telecommunications Tariff Council **as not being in compliance** with Articles 1 and 57 of the Satversme, Article 13 of the Law "The Structure of the Cabinet of Ministers", Article 16 of the Law "On the Structure of the Ministries" and Article 9 of the Law "On Telecommunications" **and null and void from the moment of their adoption.**

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

The Decision was announced in Riga, on October 1, 1999.

Chairman of the Court session	A.Endziņš
Judge of the Constitutional Court	R.Apsītis
Judge of the Constitutional Court	I.Čepāne
Judge of the Constitutional Court	I.Skultāne
Judge of the Constitutional Court	A.Ušacka