



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT in the name of the Republic of Latvia

Riga, July 11, 1997

on case No.04 - 02 (97).

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the session Aivars Endziņš, the justices Ilma Čepāne, Romāns Apsītis, Andrejs Lepse, Ilze Skultāne and the secretary of the Court session Inese Rimdžus

in the presence of the representative of the party that has submitted the application - i.e. 36 deputies of the Saeima, namely K.Čerāns, J.Mauliņš, O.Kostanda, E.Zelgalvis, J.Kušnere, J.Kazāks, E.Grīnbergs, I.Liepa, J.Lagzdiņš, K.Leiškalns, J.Ābele, A.Saulītis, J. Strods, J. Jurkāns, M. Bekasovs, A.Golubovs, O.Deņisovs, L.Stašs, A.Prēdele, A.Naglis, V. Kalnbērzs, G.Valdmanis, A.Rubins, G.V.Kristovskis, M.Vītols, Z.Čevers, V.Stikuts, L.Ozoliņš, I.Kreituse, A.Kreituss, M.Lujāns, J.Ādamsons, G.Eniņš, A.Pētersons, L.Kuprijanova and I.Bišers - the deputy of the 6 Saeima K. Čerāns

and the sworn advocate L.Skreija, who represents the Cabinet of Ministers - the institution that issued the normative act which is disputed,

pursuant to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Paragraph 4 of Article 16 as well as Paragraph 3 of the second part of Article 17 of the Constitutional Court Law

in a public hearing on July 11, 1997 reviewed the case

”On Conformity of Paragraph 3 of Regulations of the Cabinet of Ministers No. 118 of April 2,1997 ”Amendments to Regulations No.275 of the Cabinet of Ministers of 30 July, 1996 on the Procedure for Submitting

Declarations of Income by State Officials with Articles 23 and 24 of the law "On Corruption Prevention".

The Constitutional Court established:

The submitter of the claim questions the legality of Resolutions, issued by the Cabinet of Ministers, on the procedure for submitting declarations of income for state officials.

Paragraph 7 of the second part of Article 23 of the Corruption Prevention Law, adopted by the Saeima (Parliament) on September 21, 1995, determines that state officials, when taking up the post, in accordance with the established procedure, shall submit declarations on accruals of cash and non-cash or electronic funds (hereinafter referred to as electronic funds). Article 24 of the Corruption Prevention Law establishes that state officials, when submitting annual declarations, shall indicate all the information, mentioned in the second and the third parts of Article 23.

Pursuant to Article 22 of the law " On Corruption Prevention " and Paragraph 1 of the Transition Regulations, the Cabinet of Ministers issued Regulations No. 275 " The Procedure for Submitting Declarations of Income by State Officials " (hereinafter referred to as Regulations No. 275). In accordance with Paragraph 8 of Supplements 1 and 2, the submitter of the declaration shall indicate the amount of accumulated cash and the location of accrued electronic funds.

On March 27, 1997, the Cabinet of Ministers issued Regulations No. 111 " Amendments to Regulations Nr.275 of the Cabinet of Ministers of 30 July, 1996 on "The Procedure for Submitting Declarations of Income by State Officials" (hereinafter referred to as Regulations No. 111), substituting the phrase of Paragraph 8, Supplement 1 " location of the accrued electronic funds" by " the accrued amount and the location of the electronic funds." Besides, Regulations No. 111 establish that the above state officials, chairpersons of the city and district Dome(Council) as well as managing directors of the respective municipalities, according to Paragraph 3 of the first part of Article 5, shall supplement the submitted declarations up to April 15 1997 (Supplement 1 of Regulations No. 275- the section of the declaration to be withheld from publication), indicating the accrued amount of electronic funds, but all the other state officials shall do it after April 1, 1997 (when taking up office or resigning and filling in the declaration).

On April 2, 1997, the Cabinet of Ministers issued Regulations No. 118 "Amendments to Regulations No. 275 of the Cabinet of Ministers of 30 July, 1996 "On the Procedure for Submitting Declarations of Income by State

Officials ” ”(hereinafter referred to as Regulations No. 118), declaring Regulations No.111 null and void and determining that the above officials, chairpersons of the city or district Dome (Council) and managing directors of the respective municipalities, mentioned in Paragraphs 1-3 of the first part of Article 5 of the Corruption Prevention Law, shall supplement the submitted declarations, indicating the accrued amount of electronic funds , both in the part to be withheld from publication and the part to be published (Supplement 2 of Regulations No. 275).All the other state officials shall indicate the accrued amount of electronic funds after April 1, 1997 (when taking up office or resigning and filling in the declaration).

On May 30 1997, thirty-six deputies of the Saeima submitted an application to the Constitutional Court, petitioning to disaffirm Paragraph 3 of Regulations No.118. They pointed out that the Cabinet of Ministers had violated the demand, expressed in Paragraph 7 of the second part of Article 23 and the second part of Article 24, that the state officials shall declare the accruals of cash and electronic funds. The submitter stresses the fact that the above Paragraph of Regulations No.118 gives the possibility to quite a number of state officials not to indicate the sum of the accrued electronic funds for 1996 and even for 1997.

At the Court session the representative of the party, that has submitted the application, pointed out that the requirement of Articles 23 and 24 of the Corruption Prevention Law to specify the accruals of cash and electronic funds both from the semantic as well as the grammatical viewpoint means to indicate a definite amount of money. Besides, he stressed the fact, that Regulations No. 118 allow quite a number of state officials to avoid the supervision on the observance of the Corruption Prevention Law. At the same time it is not possible to ensure that the declarations of the state officials are accessible to public.

The Cabinet of Ministers in its written reply explains, that Regulations No. 275 correspond to norms of Articles 23 and 24 of the Corruption Prevention Law, as the law does not exactly establish how to indicate the accruals of electronic funds.

Besides the Cabinet of Ministers regards Paragraph 3 of Regulations No.118 as well-founded by Paragraphs 4 and 5 of the Transition Regulations that provide for grouping of officials, extending the group to the higher officials of municipalities (chairpersons of the city and district Dome (Council) and the managing directors of the respective municipalities), who have to observe the norms of the above law even a year after resigning from the office.

The Cabinet of Ministers considers that the declarations of the state officials are accessible to public in accordance with the procedure, established by Article 29 of the Corruption Prevention Law.

At the Court session the representative of the Cabinet of Ministers denied the claim of the submitter of the application, regarding it as unfounded and asked the Constitutional Court to reject it.

The representative of the Cabinet of Ministers pointed out that the Cabinet of Ministers has to ensure implementation of the law but the above law does not define the term "electronic funds". Therefore the Cabinet of Ministers - by Regulations No.118 - has more exactly defined the procedure for submitting declarations, established by Regulations No. 275, determining that state officials shall indicate not only the location of the accrued electronic funds but also the amount. As the Regulations by the Cabinet of Ministers have no retroactive force, the state officials have an obligation to indicate the amount of electronic funds only after April 1, 1997.

The representative of the Cabinet of Ministers pointed out that the Transition Regulations of the Corruption Prevention Law have provided only for the initial procedure of implementation of the above law, establishing the time limit for submitting declarations by state officials (Paragraphs 3,4,5 of the Transition Regulations) and stressing the fact that Articles 23 and 24 of the Corruption Prevention Law have become effective on June 1, 1996.

On July 30,1996 the Cabinet of Ministers - to implement Article 22 of the Corruption Prevention Law and Paragraph 1 of the Transition Regulations - issued Regulations No. 275, determining the procedure for submitting declarations of income by the state officials. The representative of the Cabinet of Ministers explained, that the Transition Regulations had been effective to the day of passing of Regulations No. 275.

Head of the Administration Department of the State Revenue Service Sīpola - invited as a witness at the request of the Cabinet of Ministers - explained that Regulations No. 118, drafted in compliance with the Corruption Prevention Law, guarantee the possibility for the State Revenue Service to receive all the necessary information on accounts of all natural persons, including the state officials. She pointed out that officials, mentioned in Paragraphs 2 and 3 of Regulations No. 118, had been grouped according to their significance and in accordance with Article 26 of the Corruption Prevention Law and Paragraphs 4 and 5 of the Transition Regulations of the above law.

The Constitutional Court, evaluating compliance of Paragraph 3 of Regulations No. 118 with Articles 23, 24 and 29 of the Corruption Prevention

Law acknowledges that the claim of the submitter is well grounded and shall be satisfied:

1. Paragraph 7 of the second part of Article 23 of the Corruption Prevention Law establishes that, in accordance with the procedure determined by the Cabinet of Ministers, state officials in their declarations shall indicate accruals of cash and electronic funds. Paragraph 8 of Supplements 1 and 2 of Regulations No. 118 envisages that only the President of the State, the deputies of the Saeima, the Prime Minister and his Deputies, the Ministers, Parliamentary Secretaries, Chairpersons of the city and district Dome (Council) and Managing directors of the respective municipalities shall supplement the submitted declarations, indicating the amount and the location of the accrued electronic funds, up to April 15, 1997. All the other state officials, mentioned in the Law, shall do it if filling in declarations after April 1, 1997 (i.e. when taking up office, resigning and filling in the declaration for 1997). Thus, the above officials do not have to indicate the amount of the accrued electronic funds both for 1996 and - if taking up office or resigning - before April 1, 1997.

The Constitutional Court regards, that the contents of the state official declaration shall be mandatory to every state official and, when declaring the accruals of electronic funds, the demands shall be identical. And even when establishing the procedure for submitting declarations, the Cabinet of Ministers is not authorised to change the demands.

Besides, reference by the Cabinet of Ministers to Paragraphs 4 and 5 of the Transition Regulations is unfounded, as the Paragraphs regulate the commencement for submitting declarations but not the procedure of declaring accruals of electronic funds.

Unfounded is also reference by the Cabinet of Ministers to the fact that the law does not exactly establish the procedure of indicating accruals of electronic funds. When analysing the process of adoption of Amendments to the Corruption Prevention Law (on December 21, 1995 and May 16, 1996), one can clearly see that the Cabinet of Ministers, in order to specify the concept “accruals of electronic funds”, has not made use of the right to submit draft laws or motions on amendments as envisaged by Articles 79 and 95 of the Rules of Procedure of the Saeima and Article 63 of the Satversme (Constitution) of the Republic of Latvia. Partly taking into consideration the repeatedly submitted requests by the deputies of the Sixth Saeima (Documents No. 1479, 2290, 2603 , reviewed at the Saeima sessions), the Cabinet of Ministers in its Regulations No. 118 has interpreted “accruals of electronic funds” as a certain amount of money and has asked to indicate the location of its whereabouts.

Thus, Paragraph 3 of Regulations 118, that permits a number of state officials - mentioned in the first part of Article 5 (Paragraphs 4 - 14) of the

Corruption Prevention Law (with an exception of the chairpersons of the city and district Dome and the managing directors of the respective municipalities) - not to declare the amount of accruals of electronic funds for 1996 as well as not to indicate the accrued amount of electronic funds up to April 1, 1997 when taking up office or resigning, **is at variance with Paragraph 7 of the second part of Article 23 , the second part of Article 24 and Paragraphs 4 and 5 of the Transition Regulations of the Corruption Prevention Law.**

2. Article 29 of the Corruption Prevention Law establishes that declarations of any state official shall be accessible to public. The above means, that the journalists and representatives of any mass media have the right of getting acquainted with declarations of any state official as well as of publishing all the information included in the declarations, with an exception of the addresses of the officials. Besides, declarations by the President of the State, the deputies of the Saeima, the Prime Minister and his Deputies, Parliamentary Secretaries, Ministers, State Ministers and the deputies of the city Dome of the Republic shall be published in the newspaper “ Latvijas Vēstnesis” not later than a month after submission of the declaration.

According to Articles 61 - 63 of the law “On Crediting Institutions”, the journalists, in cases when the location of accrued electronic funds of state officials has been indicated, have no right to receive information on the accounts.

Thus, no information on accruals of electronic funds of judges, prosecutors, sworn notaries, employees of police, the President of the Bank of Latvia and his assistant, civil servants or candidates, officials - elected, appointed or authorised by the Saeima and the Cabinet of Ministers -, managers (directors) of state and municipal companies (enterprises) and their assistants, deputies of the city Dome, district or pagasts (a small rural district) Council (with an exception of chairpersons of the city and district Dome), members of the municipal inspection committees, officials - elected, appointed or authorised by the city Dome, district and pagasts Council (with an exception of managing directors of the city Dome and district Council), officials of the State Revenue Service, members of other state and municipal collegiate institutions as well as officials, employed by state or municipal enterprises, servicemen of the National Armed Forces (in cases if the norm- expressed in the second part of Article 5 of the Corruption Prevention Law i.e. on rights to make decisions, to supervise, to control , to inquire, to inflict a penalty or to deal with state or municipal property or finances - concerns the above state officials) is accessible to public for 1996 and three months of 1997. **That is at variance with Article 29 of the Corruption Prevention Law.**

Taking into consideration the above and pursuant to the second part of Article 14 of the law “ On the Structure of the Cabinet of Ministers”, Article 8

of the law “On the Procedure of Proclaiming Laws and Other Acts by the Saeima, the President of the State and the Cabinet of Ministers and their Becoming Effective” and the third part of Article 32 of the Constitutional Court Law, **the Constitutional Court**

DECIDED:

to declare Paragraph 3 of Regulations No.118 of 2 April, 1997 “Amendments to Regulations No. 275 by the Cabinet of Ministers of 30 July, 1996 on the Procedure for Submitting Declarations of Income by State Officials” as not being in compliance with Articles 23, 24 and 29 of the Corruption Prevention Law and null and void from the moment of the announcement of the Judgment.

The Judgment becomes effective from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on July 11, 1997.

Chairman of the Constitutional Court session
Justice of the Constitutional Court
Justice of the Constitutional Court
Justice of the Constitutional Court
Justice of the Constitutional Court

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