



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

IN THE NAME OF THE REPUBLIC OF LATVIA

RIGA, MAY 7, 1997

ON CASE NO. 04 - 01 (97)

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

in the presence of the representative of the party that has submitted the application - i.e. 35 deputies of the Saeima, namely Ģ.V.Kristovskis, A.Panteļejevs, J.Bungšs, P.Keišs, I.Bērziņš, K.Lībane, K.Leiškalns, A.Seiksts, R.Marjaša, A.Tomašūns, Dz.Ābiķis, J.Ābele, E.Grinovskis, P.Putniņš, P.Kļaviņš, K.Druva, A.Prēdele, A.Naglis, A.Sausnītis, L.Tenis, J.Jurkāns, A.Kreituss, V.Nagobads, O.Grinbergs, J.Rāzna, V.Krisbergs, E.Inkēns, J.Dobelis, P.Tabūns, E.Grīnbergs, J.Ādamsons, I.Liepa, J.Kazāks, P.Apinis and E.Zelgalvis - the deputy of 6.Saeima Ģirts Valdis Kristovskis

and the sworn - advocate Egīls Radziņš who represented the Cabinet of Ministers - the institution that had passed the disputable resolution,

on the strength of Article 85 of the Constitution of Latvia and Paragraph 4 of Article 16 as well as Paragraph 3 of the second Clause of

Article 17 of the Law of the Constitutional Court in a public hearing on April 28, 1997 reviewed the case

“On Conformity of Regulations of the Cabinet of Ministers No.23 of January 10, 1997 “Amendments to the Law on Regulating Business Activity in the Energy Sector” (passed in compliance with the procedure set by Article 81 of the Satversme (Constitution)) to Article 81 of the Satversme of the Republic of Latvia and conformity of Regulations No.54 of the Cabinet of Ministers of 14 March, 1995 “On Purchase Prices of Electrical Energy Generated in the Republic of Latvia” with the Satversme of the Republic of Latvia and to the Law “On Regulating Business Activity in the Energy Sector”, as well as with other Laws”.

The Constitutional Court established:

The party, submitting the application, questions Resolutions passed by the Cabinet of Ministers that determine purchase prices (tariffs) from decentralized electrical power stations (including cogenerating stations of small production capacity).

On March 14, 1995 the Cabinet of Ministers passed Regulations No.54 “On Purchase Prices of Electrical Energy Generated in the Republic of Latvia” (hereinafter referred to as Regulations No.54), based on the law “On Rehabilitation of the Law on the Structure of the Cabinet of Ministers of April 1, 1925 (hereinafter referred to as the law on the Structure of the Cabinet of Ministers), namely the 3. Paragraph of the first Clause of Article 14, i.e. - if the corresponding problem has not been settled by law. The second Paragraph of the above regulations determined purchase prices (tariffs) of the electrical energy generated by decentralized electrical stations corresponding to average tariffs calculated by the state stock company “Latvenergo”, at the same time Paragraph 3 provided for double purchase prices of electrical energy generated

by decentralized hydroelectric power stations of small production capacity (up to 2 megawatts).

On September 6, 1995, the 5.Saeima passed the law “On Regulating Business Activity in the Energy Sector”. Clause 9 of Article 27 of this law states that “excess electrical energy from renewable energy resources (small hydroelectric power stations of production capacity up to 2 megawatts and wind generators) as well as from cogenerating stations of small production capacity (from 1 to 12 megawatts) corresponding to energy parameters determined by the state, shall be purchased for use by the state network for increased tariffs; but Clause 10 states that the purchase price for energy from the electrical power stations mentioned in Clause 9 should correspond to double average sales tariff and remain valid for 8 years from its launching. After eight years the purchase price shall correspond to the calculated average sales tariffs”.

On December 21, 1995 the Cabinet of Ministers submitted the draft law “Amendments to the Law “On Regulating Business Activity in the Energy Sector”” to the Saeima, intending to delete Clauses five to 10 of Article 27 of the Law “On Regulating Business Activity in the Energy Sector”.

By Article 8 of the Saeima 25.November, 1996 law “Amendments to the Law “On Regulating Business Activity in the Energy Sector”” the fifth, the sixth, the seventh and the eight Clauses of Article 27 were deleted, but on November 25, 1996, the Saeima rejected the motion of the Cabinet of Ministers to delete Clauses 9 and 10 of Article 27 (Verbatim report of the Saeima meeting of 25 November, 1996, “Latvijas Vēstnesis” Nr. 206, 1996)

On January 10, 1997 the Cabinet of Ministers - in compliance with the procedure set by Article 81 of the Satversme of the Republic of Latvia (henceforth- the Satversme) - passed Regulations 23 “Amendments to the law “On Regulating Business Activity in the Energy Sector“ (henceforth - Regulations 23), expressing Clause 9 of Article 27 in the following wording: ”Excess electrical energy, that corresponds to energy parameters determined by the state, from small hydroelectric power stations (with power capacity up to 12

megawatts) shall be purchased for the electrical network in accordance with the procedure determined by the Cabinet of Ministers” and deleting Clause 10 of Article 27.

The Cabinet of Ministers - in accordance with the procedure qualified by Article 81 (of the Satversme) - submitted the Regulations to the Saeima.

On March 7., 1997. thirty five deputies of the Saeima submitted application to the Constitutional Court, petitioning to annul Regulations No.23, and pointing out that the Cabinet of Ministers has violated the restriction of Article 81 of the Satversme that stating that Regulations like the above shall not change laws passed by the Saeima then in power The representative of the applicant pointed out that the Saeima had completed its legislative function at its meeting on November 25, 1996., rejecting it and leaving legal Regulations, passed by the 5. Saeima valid, as the concept “laws passed by the Saeima then in power” - used in Article 81 of the Satversme - should be understood more profoundly - as the manifestation of any legislative function of the Saeima. Besides he stressed the fact, that the traditions of the Latvian legislation, when publishing regulations on amendments to the laws, do not consider the necessity to indicate either the debate on a certain article or the fact that the wording of it remains unchanged.

The representative of the applicant emphasised that the interpretation of Article 81 of the Satversme should be based on standards of Article 1 of the Satversme about Latvia as a democratic state, considering the principle of separation of powers as the basic one and interpreting all the disputable issues about the rights of the Cabinet of Ministers in favour of the Saeima - the main and ruling legislative institution.

The applicant in his complaint requests the Court to review the legitimacy of application of Regulations Nr.54 after January 10, 1997 as well, that is - compliance of these Regulations with the Satversme and other laws. The applicant points out that on March 14, 1995 the Cabinet of Ministers issued Regulations 54 in conformity with the 3. Paragraph of the first Clause of

Article 14 of the Law on the Structure of the Cabinet of Ministers. Regulations No54 became null and void after the law “On Regulating Business Activity in the Energy Sector” came into effect: yet, the Cabinet of Ministers has unlawfully resumed implementation of the Regulations after January 10, 1997, straight after passing amendments to Article 27 - Clauses nine and ten -of Article 27 of the Law in compliance with the procedure set by Article 81 of the Satversme, determining that excess electrical energy from cogenerating stations shall be purchased in accordance with the procedure established by the Cabinet of Ministers. However, the Cabinet of Minister has not defined the procedure.

At the session of the Court, the representative of the applicant pointed out that Regulations Nr.54, passed on the strength of law “On the Structure of the Cabinet of Ministers” - Article 14, Clause 1, Paragraph 3, were valid to the time of passing a special subjecting law for the corresponding branch. The law “On Regulating Business Activity in the Energy Sector“ determined purchase tariffs of electrical energy from decentralised electric power stations, therefore from its effective date, Regulations No.54 - that have established purchase prices of electrical energy before - are at variance with the 3 Paragraph, first Clause of Article 14 of the law “On the Structure of the Cabinet of Ministers” and are null and void.

The Cabinet of Ministers, in its reply submitted to the Constitutional Court, explains that Regulations No.23 have not amended the law passed by the Saeima then in power, because the law “On Regulating Business Activity in the Energy Sector” has been passed by the 5.Saeima. The Law “Amendments to the Law on Regulating Business Activity in the Energy Sector”, passed by the 6.Saeima on 25 November 1996, does not refer to Clauses 9 and 10 of Article 27. Regulations No.23 amend only Clauses nine and ten of Article 27 of the Law that have not been amended by law before.

At the Court session the representative of the Cabinet of Ministers stressed that Regulations No.23 had been passed in compliance with the procedure set by Article 81 of the Satversme and that there was no necessity to

interpret the concept “laws adopted by the Saeima then in power” more profoundly.

Besides, the Cabinet of Ministers, in its reply explains that Regulations No.23 provide for purchase of excess electrical energy from small hydroelectric power stations, wind generators and cogenerating stations according to the procedure determined by Regulations No.54 of the Cabinet of Ministers. Clauses nine and ten of Article 27 of the law “On Regulating Business Activity in the Energy Sector” in their null and void wording referred to legal standards applied to cogenerating stations with a total capacity from 1 to 12 megawatts, but did not establish the procedure of purchasing excess electrical energy from other cogenerating stations (with a production capacity up to 1 megawatt and over 12 megawatts). Regulations No.54 determined and are determining the procedure of purchasing excess electrical energy of the latter.

At the session of the Court the representative of the Cabinet of Ministers pointed out that the law “On Regulating Business Activity in the Energy Sector” did not regulate the whole range of issues that had been settled by Regulations No.54. He stressed that no legal acts or transition rules have stated Regulations 54 to be invalid. Thus, from the effective date of the law “On Regulating Business Activity in the Energy Sector” up to the moment when Regulations No.23 came into effect, Regulations No.54 did not lose validity on their own. However, on the strength of Article 8 of the law “On setting forth and promulgation of certain laws issued by the Saeima, the President of the State and the Cabinet of Ministers as well as the procedure of their coming into effect and remaining valid” one could not apply the above Regulations when determining purchase prices of electrical energy from 1 to 12 megawatts, as it was defined by Clauses nine and ten of Article 27 of the law “On Regulating Business Activity in the Energy Sector”, i.e. a normative act with a higher legal force. Thus, Regulations No.54 are not invalid and are effective even at present.

The Constitutional Court - after considering conformity of Regulations No.23 and Regulations No.54 with the Satversme, with the law “On Regulating Business Activity in the Energy Sector”, with the law “On the Structure of the Cabinet of Ministers” as well as with other laws - declares the claim of the party that has submitted the complaint just and to be complied with:

1. In conformity with Article 81 of the Satversme “in an emergency between the Saeima sessions the Cabinet of Ministers has the right to issue regulations with a legal force.” But Article 81 of the Satversme restricts the rights, stating that the Cabinet of Ministers shall not change laws passed by the Saeima then in power”. If the above restriction is violated, Regulations of the Cabinet of Ministers shall be regarded anti-constitutional and void.

The concept “laws adopted by the Saeima then in power” - as established in Article 81 of the Satversme- includes not only the published text of the law passed by the Saeima, but also motions on perpetuating several standards in former and still valid wording, that the Saeima has considered and adopted in the third reading of the draft even though they are not officially disclosed in the published text of the law.

In compliance with Article 112 of the Saeima Regulations, that determines the procedure of vote i.e. “after considering all motions the Chairman of the session puts the draft (together with the adopted motions) to the vote. “In conformity with Clause 1 of Article 114 of the Saeima Regulations” the draft is considered passed and becomes effective if - when voting about it in body - it receives the absolute majority vote of the deputies present at the session.

Regulations No.23 formally amend only the ninth and the tenth Clauses of Article 27 of the law “On Regulating Business Activity in the Energy Sector”, however, in point of fact the above Regulations amend the law “Amendments to the Law on Regulating Business Activity in the Energy Sector” passed by the Saeima then in power on November 25, 1996.

On December 21, 1995 the Cabinet of Ministers while reviewing the draft “Amendments to the law ”On Regulating Business Activity in the Energy Sector””, submitted to the Saeima, proposed to delete Clauses nine and ten of Article 27 of the law “On Regulating Business Activity in the Energy Sector”. As can be seen from the verbatim report of the Saeima meeting of November 25, 1996, the deputies - while giving consideration to the draft in its third reading - adopted the motion not to delete Clauses nine and ten of Article 27 and passed the law in total.

Thus the 6.Saeima, by adopting the motions as well as by voting for the draft of the law and the motions in total, has expressed its will to retain Clauses nine and ten of Article 27 in their previous effective wording.

Therefore, the Cabinet of Ministers could not amend Clauses nine and ten of the law “On Regulating Business Activity in the Energy Sector” in accordance with the procedure qualified by Article 81 of the Satversme even though the decision of the Saeima on retaining Clauses nine and ten in their previous wording were not formally included in the text of the law “Amendments to the law “On Regulating Business Activity in the Energy Sector”” passed on November 25, 1996.

2. The 3. Paragraph of the first Clause of Article 14 of the law “On the Structure of the Cabinet of Ministers” stresses that the Cabinet of Ministers is authorised to pass regulations “in cases when the respective issue has not been settled by law”. Thus, the Regulations, passed in conformity with the above authorisation are valid to the effective date of the law on certain issues.

In conformity with general principles of law, legislative acts are considered invalid: 1) if the termination of authority or any other condition that restricts the act has set in; 2) if the legislative act is deleted or 3) if another legislative act, settling the very same issues and with the same or higher force of law has been passed.

On March 14, 1995 the Cabinet of Ministers in conformity with the 3. Paragraph of Clause one of Article 14 of the law “On the Structure of the Cabinet of Ministers” passed Regulations No.54, as - at that time - purchase prices of electrical energy produced by decentralized electrical power stations (that were not under the management of the stock company “Latvenergo”) had not been established by law.

On September 6, 1995 the Saeima passed the law “On Regulating Business Activity in the Energy Sector” and Clauses nine and ten of Article 27 of the law determined purchase prices of electrical energy from decentralized electrical power stations, i.e. from hydro- electrical power stations with power capacity up to 2 megawatts and wind generators as well as from cogenerating stations (with power capacity from 1 megawatt to 12 megawatts).

Consequently, Clauses nine and ten of Article 27 of the law “On Regulating Business Activity in the Energy Sector” settle the same issues that are established by Paragraphs 2. and 3. of Regulations 54 of the Cabinet of Ministers, namely, purchase prices of electrical energy from decentralized electrical power stations. Besides, the purpose expressed by Article 2 of the law “On Regulating Business Activity in the Energy Sector” is different if compared with Regulations No.57; it is not only to facilitate production of electric power in the Republic of Latvia but also to determine “obligations and rights of the employers working in the sphere of electric supply, to ensure a continuous and unimpeded supply of electrical energy, to protect the interests of consumers, at the same time facilitating business activity in this sphere and assuring that electric supply meets the requirements of the power sector of the state.

Since the effective date i.e. October 11, 1995 - of the law “On Regulating Business Activity in the Energy Sector” the legal basis of validity of Regulations No.54 ceased to exist.

The fact, that the transitional provisions of the law “On Regulating Business Activity in the Energy Sector” do not declare Regulations No.54 to be null and void, has no legal importance.

Taking into consideration the above facts,
the Constitutional Court

decided:

1. To declare Regulations No.23 of January 10, 1997, ”Amendments to the Law “On Regulating Business Activity in the Energy Sector” ” as not corresponding to Article 81 of the Satversme of the Republic of Latvia and null and void from the time of announcement of the Judgment.

2. To declare Regulations of the Cabinet of Ministers No.54 of March 14, 1995 “On Purchase Prices of Electrical Energy Produced in the Republic of Latvia” as not being in conformity with Article 14 of the law “On the Structure of the Cabinet of Ministers” and null and void from October 11, 1995.

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 May 7, 1997.

Chairman of the Constitutional Court session

A.Endziņš

Justices of the Constitutional Court

I.Skultāne

R.Apsītis

I.Čepāne

A.Lepse

A.Ušacka