

**DECISION
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 20 December 1996**

Review of the petition of the Administrative Law Chamber of the Supreme Court of 11 November 1996, to declare invalid clause 2 and appendix to the Government of the Republic Regulation no. 486 of 28 December 1994, entitled "Amendments to the Government of the Republic Regulation no. 408 of 21 December 1993 and to the organisation of import, wholesale and retail of vodka", because of the conflict thereof with § 87 (6) of the Constitution.

The Constitutional Review Chamber sitting in panel presided over by the Chairman of the Chamber Rait Maruste and composed of the members of the Chamber Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Põld at its session of 6 December 1996, with the Chancellor of Justice Eerik-Juhan Truuväli appearing and in the presence of the secretary to the Chamber Piret Lehemets

reviewed the petition of the Administrative Law Chamber of the Supreme Court of 11 November 1996.

The Minister of Justice and the representative of the Government of the Republic did not participate in the session.

From the documents submitted to the Constitutional Review Chamber **it appears, that:**

The Administrative Law Chamber, in its ruling in administrative offence matter no. 3-3-1-30-96, dated 11 October 1996, did not apply clause 2 and the appendix to the Government of the Republic Regulation no. 486, entitled "Amendments to the Government of the Republic Regulation no. 408 of 21 December 1993 and to the organisation of import, wholesale and retail of vodka", because these were in conflict with §87(6) of the Constitution.

On 13 November 1993, pursuant to § 5 of the Constitutional Review Court Procedure Act, the Administrative Law Chamber submitted a petition, initiating a constitutional review proceeding in the Constitutional Review Chamber of the Supreme Court.

It appears from the petition of the Administrative Law Chamber and the documents submitted, that I. Kutsareva and S. Kutsarev were punished under § 137⁴(1)2) of the Code of Administrative Offences (hereinafter "the CAO") for having stored vodka "Magic Crystal", spirit "Royal American Spirits" and aromatized spirit "Tropical Fruits", the import of which into Estonia is not allowed. The reason for the punishment was the infringement of the Government of the Republic Regulation no. 408 of 21 December 1993. According to clause 2 of the Regulation the activity licences for the import of white vodka, with the exception of vodkas listed in the Appendix to the Regulation, were suspended temporarily, until the storage of pertinent data in a data basis. In fact, the import of the vodkas not enlisted in the Appendix, for trade purposes, was prohibited by this Regulation. According to this Regulation the prohibited vodkas included the vodka "Magic Crystal". The Administrative Law Chamber held that in order to punish someone for the storage of vodka, the import of which into Estonia is prohibited, there must be an Act or an administrative legislation of general application issued under an Act, prohibiting the import of a certain vodka to Estonia.

The Administrative Law Chamber pointed out that §87 (6) of the Constitution establishes that the Government of the Republic shall issue regulations on the basis of and for the implementation of law. The first sentence of § 5 of the Government of the Republic Act, passed on 10 October 1992, which was in force when the government issued its Regulation no. 486 of 28 December 1994, has the same meaning. These provisions required that the Government of the Republic could only issue regulations if there is a provision in an Act, delegating the authority to do so.

The preamble of the Government of the Republic Regulation no. 486 of 28 December 1994 states that the Regulation is based on the Consumer Protection Act, without specifying the provision authorising the government to issue the regulation. The Administrative Law Chamber is of the opinion that on 28 December 1994 there was no provision in the Consumer Protection Act, passed on 15 December 1993, authorising the Government of the Republic to issue a regulation of the kind.

On 26 June 1996 "The Government of the Republic Act and Legal Acts Related to the Implementation thereof Amendment Act" was passed. § 30 of the Act amended § 11 of the Consumer Protection Act. The first sentence of § 11(3) of the Consumer Protection Act establishes: "In order to safeguard the consumer rights provided for in this Act the Government of the Republic shall establish the general rules for shops, the general rules for catering, the rules for the labelling of foodstuffs and goods, the rules for the import

and export and production and sale of alcohol, tobacco and tobacco products, the health protection rules for the production, storage, transport and sale of foodstuffs, as well as other rules for safeguarding the consumer rights in other cases stipulated by law”.

The Government of the Republic Act and Legal Acts Related to the Implementation thereof Amendment Act took effect on 26 July 1996, and had no retroactive effect. § 30 of this Act did not provide that § 1 (3) of the Consumer Protection Act shall retroactively approve the earlier regulations of the government. The Administrative Law Chamber argued that in a democratic law-based society the legislator can not retroactively approve administrative legislation of general application restricting individuals' rights and freedoms, the implementation of which is guaranteed by punishments. § 11(3) of the Consumer Protection Act, in the wording of 26 July 1996, forms a legal basis for the Government of the Republic to issue regulations which regulate the import of alcohol only as of the date the amendments to the Act took effect. Thus, the Government of the Republic Act and Legal Acts Related to the Implementation thereof Amendment Act did not legalise, for the purposes of § 87(6) of the Constitution, the Government of the Republic Regulation no. 486 of 28 December 1994.

The Administrative Law Chamber also held that neither can § 21(3) of the Customs Act or § 2(1) of the CAO be viewed as provisions delegating authority for the purposes of § 87(6) of the Constitution.

The Administrative Law Chamber also pointed out the rule included in § 2(1) of the CAO, pursuant to which “rules for the infringement of which the present Code establishes administrative liability shall be established by Acts, by the Regulations of the Government of the Republic of Estonia or pursuant to procedure established by the Government of the Republic”. The Administrative Law Chamber is of the opinion that this rule is not a provision delegating authority for the purposes of § 87(6) of the Constitution, because in a democratic society a norm delegating authority can not be of general character. The Administrative Law Chamber argued that to accept delegation of a general character would mean to admit that the Riigikogu may, with a single provision delegating authority, yield its compulsory legislative function to the Government of the Republic or to ministers. Pursuant to the principle of separate powers, established in § 4 of the Constitution, § 2(1) of the CAO can not be a provision delegating authority for the purposes of § 87 (6) of the Constitution. Instead, this norm can be viewed as a supporting one, which encourages those who have to apply the norm to look for the rules for the violation of which the CAO has established liability in Acts, Regulations of the Government of the Republic or in Regulations of ministers, issued on the basis of sub-delegation. Thus, the Government of the Republic Regulation no. 486 of 28 December 1994 and the appendix thereto have been issued exceeding the limits of competence.

The Constitutional Review Chamber of the Supreme Court, having given a fair hearing to the Chancellor of Justice who supported the petition of the Administrative Law Chamber and, having examined the materials submitted to it, found that:

The reasoning of the petition of the Administrative Law Chamber of the Supreme Court arising on the basis of administrative offence matter no. 3-3-1-30-96 coincides with the reasoning of the petition for constitutional review pertaining to administrative offence matter no. 3-3-1-29-96. In regard to the latter the Constitutional Review Chamber expressed its opinion in its judgment no. 3-4-1-3-96 of 20 December 1996. The Chamber does not consider it necessary to repeat the reasoning of the judgment. Thus, the Constitutional Review Chamber concludes that clause 2 and appendix to the Government of the Republic Regulation no. 486 of 28 December 1994 are in conflict with §§ 3(1), 4 and 87(6) of the Constitution and have already been declared invalid by the referred judgment of the Constitutional Review Chamber.

On the basis of the foregoing and pursuant to § 19(1)2) of the Constitutional Review Court Procedure Act, **the Chamber has decided:**

to consider that the petition of the Administrative Law Chamber pertaining to administrative offence matter no. 3-3-1-30-96 has already been satisfied by the Constitutional Review Chamber judgment no. 3-4-1-3-96 of 20 December 1996.

The judgment is effective as of pronouncement, is final and is not subject to further appeal.

Rait Maruste
Chairman of the Constitutional Review Chamber