

**DECISION
OF THE SUPREME COURT OF THE RUSSIAN FEDERATION
NO. GKPI 2001-783 OF MAY 16, 2001**

The Supreme Court of the Russian Federation, in the composition of:
Chairman - Judge of the Supreme Court Yu.D. Redchencko;
with Secretary I.V. Zhukova;
with participation of Public Prosecutor N.Yu. Goncharova,

having considered in an open court session the civil case on the application of Leonid Yegorovich Petykhov, Director General of the Kansk Biochemical Plant closed-type joint-stock company for recognizing as invalid the [Rules](#) for the Issue of Quotas for the Output of Ethyl Alcohol from All Kinds of Raw Materials, of Denatured Alcohol and of Alcohol-Containing Solutions, approved by [Decision](#) of the Government of the Russian Federation No. 1292 of November 3, 1998, has hereby established:

L.Ye. Petukhov - the applicant, turned on behalf of the Kansk Biochemical Plant closed-type joint-stock company to the Supreme Court of the Russian Federation with the above-said claim, referring to the fact that the disputed Rules, stipulating the need to receive quotas for the output and delivery of ethyl alcohol, of denatured alcohol and of alcohol-containing products, contradict the currently operating legislation of the Russian Federation and infringe upon the rights of the legal entities - the producers of the above-said products.

In the application it is in particular pointed out that the [Federal Law](#) on the State Regulation of the Output and Turnover of Ethyl Alcohol, of Alcohol and Alcohol-Containing Products (with the amendments of January 7, 1999) does not stipulate such method for the state regulation as the issue of quotas for the output and the delivery of the above-mentioned products to its producers. The given Law just stipulates the need for setting quotas for the purchases of ethyl alcohol. In the List of Restrictions, introduced by the Russian Federation in the sphere of the output and turnover of ethyl alcohol and of alcohol-containing products ([Article 26](#) of the said Law), an obligatory nature of setting quotas for the output and turnover of the given products is not established either.

The presently existing procedure for the issue of quotas for the output and the turnover of ethyl alcohol and of alcohol-containing products, established by the disputed [Rules](#), has in fact restricted the constituent activity of the applicant enterprise in conformity with the licences it has obtained.

V.K. Pogodenkov and A.V. Naidin came out in support of the presented claim at the court session.

N.A. Ozhe, A.V. Mezhonov, A.K. Senotrusova and E.Sh. Naserov, representatives of the Government of the Russian Federation, did not agree with the presented claim and asked to leave it without satisfaction, referring to the fact that the disputed Rules do not contradict the legislation of the Russian Federation and do not actually restrict the applicant's rights.

Having heard out the explanations of the applicant's representatives and of the representatives of the Government of the Russian Federation, having studied the case materials and heard out the conclusion of N.Yu. Goncharova, Public Prosecutor of the Office of the Procurator-General of the Russian Federation, who thought it necessary to satisfy the filed claim, the Supreme Court of the Russian Federation hereby finds it subject to satisfaction on account of the following grounds.

In conformity with [Article 26](#) of the Federal Law on the State Regulation of the Output and Turnover of Ethyl Alcohol, Alcohol and Alcohol-Containing Products of July 15, 1995 (in the edition of the Federal Law of January 7, 1999), in the sphere of the output and turnover of ethyl alcohol, alcohol and alcohol-containing products shall be prohibited: the output of ethyl alcohol without controlling alcohol-measuring instruments; the sale of ethyl alcohol to organizations not possessing the corresponding licences or not having been assigned quotas for its purchase, or the sale of ethyl alcohol in excess of the said quotas; the turnover of ethyl alcohol and alcohol products without formalizing the documents, confirming the legality of their output and turnover; other restrictions in this sphere, imposed by the given Law, are also cited.

From the content of the given norm of the Law it also follows that alongside with the restrictions, stipulated by the present Federal Law in the sphere of the output and turnover of ethyl alcohol, alcohol and alcohol-containing products, other restrictions may be imposed only by a federal law.

As established by the court, [Decision](#) of the Government of the Russian Federation No. 1292 of November 3, 1998 approved the [Rules](#) for the Issue of Quotas for the Output of Ethyl Alcohol from All Kinds of Raw Materials, of Denatured Alcohol and of Alcohol-Containing Solutions, which laid it down that the quota shall determine the volume of the output of the products by a legal entity in conformity with the balances of the output and of the consumption of ethyl alcohol from all kinds of raw materials, and that the output of the given products without the corresponding quotas is prohibited.

The representatives of the applicant hold it that the disputed Rules do not correspond to the demands of the above-said Law and impose restrictions on the output of ethyl alcohol, of denatured alcohol and of alcohol-containing solutions, not stipulated by it or by any other federal laws, violating by this the rights of the Kansk Biochemical Plant closed-type joint-stock company.

These statements of the applicant's representatives have not been refuted.

No convincing data for the refutation thereof have been presented by the representatives of the Government of the Russian Federation either.

Analysis of the content of the disputed [Rules](#) also testifies to their non-correspondence to the general sense and logic of the Federal Law on the State Regulation of the Output and Turnover of Ethyl Alcohol and, in particular, to the provisions presented in its [Article 26](#), which does not stipulate any restrictions or bans upon the output of ethyl alcohol and of alcohol-containing products without the corresponding quotas assigned for their output.

Under such circumstances, the court has arrived at the conclusion that the disputed Rules shall be recognized as illegal and not subject to application.

The argument of the representatives of the Government of the Russian Federation that the demand of the Rules on it being necessary for the producer of ethyl alcohol and of alcohol-containing products to obtain the corresponding quota for their output shall not be seen as a restriction of their rights and shall not be taken into consideration, since it is not based on anything and is refuted by the data contained in the case.

In particular, from the explanations of the applicant's representatives - and this was not called in question in the court by the representatives of the Government of the Russian Federation - it follows that without the quota the output of ethyl alcohol and of alcohol-containing products is not admissible.

The content of [Item 6](#) of the Rules, which prohibits the output of the above-said products without the corresponding quotas for their output, testify to the same. Proceeding from this, the court estimates the prohibition, contained in the Rules, of the output of the above-mentioned products without receiving the quotas, not stipulated by the law, as a direct restriction of the rights of their producers.

The reference of the representatives of the Government of the Russian Federation to the need for the state registration of the output and the turnover of ethyl alcohol and of alcohol-containing products cannot be recognized as well-substantiated either, since the [Federal Law](#) on the State Regulation of the Output and Turnover of Ethyl Alcohol stipulates the corresponding forms of the state control over the output of these products, in particular, the need to obtain a licence on such kind of activity ([Article 11](#)), the presentation of declarations on the volume of the output and the turnover of ethyl alcohol and of alcohol-containing products ([Article 14](#)), the prohibition of the sale of ethyl alcohol to organizations not having been assigned any quotas for its purchase, or the sale of these products in excess of the said quotas ([Articles 9](#) and [26](#)).

Introduction of any other additional forms of the state control over the output of the above-said products, in actual fact restricting the rights of the producers, shall be admissible only by a federal law.

The restriction in the form of the need to receive quotas for the output of the above-said products, contained in the disputed [Rules](#), is not stipulated by either the [Federal Law](#) on the State Regulation, or by the other federal laws, as was already pointed out above.

As for the mention of the right to the first priority receipt of the quotas for the output or for the consumption of ethyl alcohol by organizations, working in accordance with the resource-saving and

ecologically safe technologies, contained in the [third part of Article 10](#) of the Federal Law on the Regulation of the Output and Turnover of Ethyl Alcohol, Alcohol and Alcohol-Containing Products, this mention, proceeding from the sense and the thrust of the entire content of the given Law, shall not be recognized as a circumstance imposing upon the producers the duty to receive such kind of quotas.

The given mention is contained in the norm of the Law, which in fact establishes quotas for the purchase of ethyl alcohol.

In the norms of the Law, which directly regulate the terms of the output and turnover of ethyl alcohol and of alcohol-containing products ([Articles 8, 9, 11 and 14](#)), there is no mention of the producers' duty to receive quotas for the output of these products. In the norms of the given Law there is not contained any responsibility of the enterprises for the output of such products without the corresponding quotas either, which as a whole testifies to the absence of the producers' duty to receive them.

On the ground of the above-said and relying on [Articles 191-197](#) and [239-7](#) of the Civil Procedural Code of the RSFSR, the Supreme Court of the Russian Federation hereby resolves:

- the application of L.Ye. Petukhov, Director General of the Kansk Biochemical Plant closed-type joint-stock company shall be satisfied.

To recognize the [Rules](#) for the Issue of Quotas for the Output of Ethyl Alcohol from all Kinds of Raw Materials, of Denatured Alcohol and of Alcohol-Containing Solutions, approved by [Decision](#) of the Government of the Russian Federation No. 1292 of November 3, 1998, as illegal and as not subject to application.

The present Decision may be appealed against with the Cassation College of the Supreme Court of the Russian Federation in the course of ten days from the day of its passing in the final form.

Judge of the Supreme Court