Constitutional judgment 3-4-1-15-08

RULING
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT

No. of the case	3-4-1-15-08
Date of decision	9 December 2008
Composition of court	Chairman Märt Rask, members Peeter Jerofejev, Hannes Kiris, Villu Kõve and Harri Salmann
Court Case	Review of constitutionality of § 1(4), the parts of the first sentence of § 6(1) reading "[…] and to all other owners of the bordering immovables […] and shall set them the term of one month for submission of applications for the privatisation of suitable land for the purpose of joining the lands to their plots", § 6(2) and the first sentence of § 6(3) of Government of the Republic Regulation no. 50 of 22 February 2007 "Procedure for privatisation of land established in § 22(1^2) of the Land Reform Act".
Basis of proceeding	The Tallinn Administrative Court judgment of 12 September 2008 in administrative case no. 3-08-869
Hearing	Written proceeding
CONCLUSION	**To dismiss the petition of the Tallinn Administrative Court.**

FACTS AND COURSE OF PROCEEDING

1. On 4 May 2008 Ivar Kohv filed an action against the Tallinn Land Board with the Tallinn Administrative Court, applying for the non-application of some provisions of the Government of the Republic Regulation no. 50 of 22 February 2007 "Procedure for privatisation of land established in § 22(1^2) of the Land Reform Act" (hereinafter "the Regulation") due to the conflict thereof with the Land Reform Act and the Constitution; for the termination of privatisation of land bordering the immovable of Taara 6 to other owners

of the bordering immovables; for stopping the delay of privatisation of land bordering the immovable of Taara 6, and for requiring the Tallinn Land Board to submit a proposal determining the boarders enabling to privatise the land under dispute and join it to the immovable of Taara 6.

2. According to the Tallinn Administrative Court judgment of 12 September 2008, on 1 June 2006 Ants Vilbo had filed an application with the Tallinn Land Board under § 22(1^2) of the Land Reform Act (hereinafter "the LRA") for the privatisation of land bordering the immovable he owned (located at Taara 6, Tallinn) by a right of pre-emption. On 21 June 2006 A. Vilbo sold the immovable of Taara 6 to Ivar Kohv.

By his order no. 727-k of 3 April 2007 the Harju County Governor gave permission to the Tallinn City Government for the privatisation of state land not yet subjected to reform, bordering the immovable of Taara 6, under § 22(1^2) of the LRA.

On 8 February 2008, in response to the inquiry of I. Kohv, the Tallinn Land Board informed the latter that in the process of privatisation of the land under discussion the successor of the immovable Taara 6a, who had been entered in the land register on 11 March 2008 as a co-owner, has also submitted an application for the privatisation of that land, and that is why – pursuant to the Regulation – a notice concerning the possibilities of privatisation of land was to be sent also to the other co-owner.

3. The Tallinn Administrative Court satisfied the action of I. Kohv and declared unlawful the acts performed by the Tallinn City Government upon privatisation by a right of pre-emption of the land bordering the immovable of Taara 6, and issued a precept to the Tallinn City Government to make a proposal to I. Kohv concerning the determination of boundaries within one month since the entering into force of the court judgment.

4. To satisfy the action of I. Kohv the Tallinn Administrative Court declared to be in conflict with the first sentence of § 3(1) and with § 87(6) of the Constitution and did not apply § 1(4), § 6(2), the first sentence of § 6(3), and the parts of the first sentence of § 6(1) reading "[…] and to all other owners of the bordering immovables […] and shall set them the term of one month for submission on applications for the privatisation of suitable land for the purpose of joining the lands to their plots" of the Regulation.

JUSTIFICATIONS OF THE ADMINISTRATIVE COURT AND THE PARTICIPANTS IN THE PROCEEDING

5. The administrative court was of the opinion that § 1(4), § 6(2), the first sentence of § 6(3), and the parts of the first sentence of § 6(1) reading "[…] and to all other owners of the bordering immovables […] and shall set them the term of one month for submission on applications for the privatisation of suitable land for the purpose of joining the lands to their plots" of the Ruling were in conflict with the term established in the fourth sentence of § 40(1) of the LRA. Thus, upon issuing the Regulation the Government of the Republic had exceeded the authority delegated by § 22(1^2) of the LRA and is therefore also in conflict with § 3(1) and with § 87(6) of the Constitution.

The fourth sentence of § 40(1) of the LRA establishes that applications for the privatisation of land on the basis of § 22(1^2) of the LRA shall be accepted until 1 June 2006. § 22(12) of the LRA reads as follows: "If is not possible to form a separately usable immovable on land bordering on an immovable in private ownership, the owners of the bordering immovables have the right to apply for the privatisation of the land for the purpose of joining the lands to their plots. Upon privatisation of land under this subsection the selling price of land to be privatised shall be determined on the same basis as upon privatisation of land by a right of pre-emption, and the land shall be privatised with the permission of the county governor and pursuant to procedure established by the Government of the Republic." Consequently, the term for submitting applications for privatisation of land under § 22(1^2) of the LRA is established in the law definitively and unconditionally, and the Government of the Republic had no power to extent the term.

6. I. Kohv is of the opinion that § 1(4) and § 6(1) of the Regulation are in conflict with § 40 of the LRA and,

thus, also with § 3(1) and § 87(6) of the Constitution.

[Text omitted in translation]

7. The Tallinn City Government is of the opinion that the provisions of the Regulation are in conformity with the objective and spirit of establishing § 22(1^2) of the LRA, do not exceed the limits of the norm delegating authority included in this provision, and are not in conflict with § 40(1) of the LRA.

[Text omitted in translation]

8. The Minister of Justice is of the opinion that the provisions of the Regulation not applied by the administrative court are in conflict with the first sentence of § 3(1) and with § 87(6) of the Constitution.

[Text omitted in translation]

9. The Minister of the Environment is of the opinion that the provisions of the Regulation not applied in the judgment of the Tallinn Administrative Court are not in conflict with the first sentence of § 3(1) or with § 87(6) of the Constitution.

The Government of the Republic has not exceeded its competence, as the Regulation did not extend the term for submitting applications established in the fourth sentence of § 40(1) of the LRA. The administrative court held to the contrary because it failed to observe the spirit of § 22(1^2) of the LRA and incorrectly interpreted the fourth sentence of § 40(1) of the LRA.

The Minister of the Environment argues that § 22(1^2) of the LRA must be interpreted to the effect that on the basis of this provision a person can only request that a local government initiate proceedings for determining the boundaries of land suitable for joining to immovables. A prerequisite for privatisation of land (or, more precisely, a strip of land) can be created only if a county governor gives permission for privatisation, as required in the Regulation. Neither the submission of an application nor the permission of a county governor give a person a subjective right to demand that the land be privatised only to the person concerned; instead these acts give a right to file applications for privatisation of that land to all owners of bordering immovables (after the local government has informed of the receipt of the permission), which shall be followed by land distribution proceedings. § 22(1^2) of the LRA constitutes a manifestation of the principle of equal treatment, established in the Constitution. The purpose of this provision is to enable all owners of bordering immovables (who have already used their right of pre-emption for acquiring land on the basis of the Ownership Reform Act or the Land Reform Act) to have the land not designated for a specific purpose joined to their immovables.

The Minister of the Environment argues that the term for submitting applications, established in the fourth sentence of § 40(1) of the LRA, is to be understood in the light that it was established with the aim of speeding up the completion of land reform, to first and foremost collect the applications from those persons who knew or who were of the opinion that there was land suitable for joining to their immovables bordering their immovables or situated in between their immovables. After the submission of such applications the local governments were to find out whether the plots of land met the characteristics set out in § 22(1^2) of the LRA and the Regulation. The Minister of the Environment adds further that on 1 June 2006, when the former owner of the immovable of Taara 6 submitted the application for privatisation of land, he could not possibly know whether the plot of land under dispute could be deemed as a strip of land for the purposes of § 22(1^2) of the LRA. Namely, by that time the land reform of the immovable currently named Pargi 33 had not been completed and the plot of land under discussion constituted a part of state land not yet subjected to land reform.

Consequently, the Regulation issued under § 22(1^2) of the LRA did not extend the term established in the fourth sentence of § 40(1) of the LRA. If we were to adhere to the opinion of the administrative court that only those persons who have submitted applications by the time established in the fourth sentence of § 40(1) of the LRA have the right to additionally privatise strips of land, the land reform could not be completed,

because in such a situation it would not possible for persons to apply for the privatisation of those strips of land concerning which the proceedings are conducted on the initiative of local governments.

10. The Chancellor of Justice is of the opinion that the part of the first sentence of § 6(1) of the Regulation reading "[…] and shall set them the term of one month for submission on applications for the privatisation of suitable land for the purpose of joining the lands to their plots" is in conflict with § 3(1) and § 87(6) of the Constitution and with the second sentence of § 22(1^2) of the LRA. The Chancellor of Justice argues further that if the referred part of § 6(1) of the Regulation were to be declared invalid, § 6(2) and the first sentence of § 6(3) of the Regulation would be in conflict with § 13(2) of the Constitution (principle of legal clarity).

[Text omitted in translation]

THE PROVISIONS NOT APPLIED

11. § 1(4) of the Government of the Republic Regulation no. 50 of 22 February 2007 "Procedure for privatisation of land established in § 22(1^2) of the Land Reform Act":

"The term for submitting applications for privatisation of suitable land for the purpose of joining the plots to immovables established in § 40(1) of the "Land Reform Act" shall be applied to the submitting of applications by the owners of immovables referred to in § 3(1) of this Regulation."

12. Parts of the first sentence of § 6(1) of the Regulation reading "[…] and to all other owners of the bordering immovables […] and shall set them the term of one month for submission on applications for the privatisation of suitable land for the purpose of joining the lands to their plots".

13. § 6(2) of the Regulation: "An owner of a bordering immovable who wishes to privatise suitable land for joining to his or her immovable (hereinafter "an applicant") shall set out in the application all information concerning the immovable to which he or she wishes land to be joined, and the following information:

1) natural person: given name and surname, personal identification code, place of residence, postal address and the number of land register part of the immovable he or she owns;

2) legal person: name, commercial registry code, registered office and postal address, data concerning the person authorised to represent the legal person in the land privatisation procedure, and the number of land register part of the immovable owned by the legal person."

14. The first sentence of § 6(3) of the Regulation: "An applicant on the basis of whose application, referred to in § 3(1) of this Regulation, the procedure for determining the boundaries of suitable land for joining to his or her immovable has been initiated, does not have to submit a new application and his or her earlier application shall be deemed as an application submitted on time."

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

15. The Constitutional Review Chamber of the Supreme Court shall first ascertain whether the provisions that the Tallinn Administrative Court declared unconstitutional and did not apply are relevant for the adjudication of the case. Such control is both justified and necessary, because pursuant to § 15(1) of the Constitution as well as § 14(2) of the Constitutional Review Court Procedure Act the Supreme Court is entitled to declare unconstitutional or invalid only relevant provisions. If a provision is not relevant, the concrete norm control initiated by a court judgment is not permissible and the petition must be dismissed.

16. Pursuant to the Supreme Court judicial practice a norm is relevant if it is of decisive importance for the adjudication of a matter. A norm is of a decisive importance when in the case of unconstitutionality of the norm a court should render a judgment different from that in the case of constitutionality of the norm. Only a norm that has been applied in regard of a person and which actually regulates a disputed relation or a situation, can be regarded as relevant (Constitutional Review Chamber of the Supreme Court judgment of 13

February 2007 in case no. 3-4-1-16-06 – RT III 2007, 6, 43, paragraph 14).

17. The Chamber points out that as in order to ascertain the legal norm of decisive importance for the adjudication of a case the court has to ascertain the circumstances of significant importance for the adjudication of the case, the control of relevance in the Supreme Court requires, in exceptional cases, also the control of whether the court who adjudicated the initial legal dispute has ascertained such material circumstances. If the Supreme Court did not have such a right a situation might arise where the Supreme Court reviews the constitutionality of norms that had been applied to a petitioner randomly or unfoundedly (see in this regard Constitutional Review Chamber of the Supreme Court judgment of 20 March 2006 in case no. 3-4-1-33-05 – RT III 2006, 10, 89, paragraph 18).

18. The Chamber is of the opinion that the Tallinn Administrative Court has failed to ascertain all the circumstances that would enable to be convinced in the constitutional review proceeding of the relevance of the provisions that the court did not apply. Firstly, it does not appear from the judgment that the court has ascertained the content of the applications submitted by A. Vilbo, the former owner of Taara 6, and by the complainant I. Kohv. Yet, the content of these applications determines whether and when the complainant's rights relating to privatisation procedure were created. Secondly, the court has failed to ascertain whether at the time of alleged submission of privatisation applications it was unambiguously clear that a strip of land had been left in between the immovables of Taara 6, Taara 6a and Pargi 33, out of which a separate immovable could not be formed and the privatisation of which could be applied for on the basis of § 22(1^2) of the LRA. In this regard the Supreme Court points out the fact that in his written opinion submitted in the constitutional review proceeding the Minister of the Environment states that the cadastral unit of Pargi 33 was registered in the land cadastre only on 17 November 2006.

19. Due to the circumstances referred to in the previous paragraph that the court has failed to ascertain the Chamber can not be convinced that the provisions of the privatisation procedure which the court did not apply are of decisive importance for the adjudication of the matter. The Chamber can not eliminate these deficiencies, because the Supreme Court does not, by way of constitutional review, adjudicate the legal disputes that are the objects of initial court cases, and does not ascertain the matters of fact that are to be ascertained in the course of hearing the initial cases (see Constitutional Review Chamber of the Supreme Court judgment of 25 November 2003 in case no. 3-4-1-9-03 RT III 2003, 35, 368, paragraph 12).

20. For the above considerations and on the basis of § 11(2) of the Constitutional Review Court Procedure Act the Chamber dismisses the petition of the Tallinn Administrative Court.

21. *[Text omitted in translation]*
