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Constitutional judgment 3-3-1-1-05

JUDGMENT
OF THE GENERAL ASSEMBLY
OF THE SUPREME COURT

No. of the case	3-3-1-1-05
Date of judgment	27 June 2005
Composition of court	Chairman Märt Rask, members Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Julia Laffranque, Jaak Luik, Jüri Põld, Harri Salmann, Tambet Tampuu and Peeter Vaher
Court Case	Review of constitutionality of subsections § 413 (1) and (10) of Traffic Act
Basis of proceeding	Appeal in cassation of Eduard Selezov against the judgment of Tartu Circuit Court of 12 November 2004 in administrative matter No 2-33-245/2004
Hearing	Written proceeding
DECISION	**To dismiss the appeal in cassation of Eduard Selezov and to uphold the judgment of Tartu Circuit Court of 12 November 2004 in administrative matter No 2—3-245/2004.**

FACTS AND COURSE OF PROCEEDING

1. By the decision of Ida [Eastern] Police Prefecture of 8 June 2004 in misdemeanour matter No 2590,04,002880 Eduard Selezov was punished by a fine under § 74^{19} of Traffic Act for driving a power-driven vehicle while intoxicated. By decision No 6023 of the head of Rakvere office of Estonian Motor Vehicle Registration Centre (hereinafter "MVRC") of 6 July 2004 E. Selezov's right to drive was suspended for three months under § 41^{3}(1) of Traffic Act (hereinafter "TA").

2. On 7 July 2004, E. Selezov filed an action against the MVRC's decision on the suspension of his right to drive with Jõhvi Administrative Court, requesting that the decision be annulled because of the conflict thereof with the Constitution and the principle of good administration.

3. On 26 July 2004 the administrative court satisfied the action by its judgment and annulled the decision of the head of Rakvere office of MVRC of 6 July 2004 on the suspension of the right to drive.

4. MVRC filed an appeal against the judgment of Jõhvi Administrative Court. In the appeal MVRC contested the judgment of Jõhvi Administrative Court in its entirety due to the violation of procedural norms, and requested that the judgment of Jõhvi Administrative Court be annulled and a new judgment, dismissing the action of E. Selezov, be rendered.

5. By its judgment of 12 November 2004, Tartu Circuit Court satisfied the appeal. The circuit court annulled the judgment of Jõhvi Administrative Court of 26 July 2004 and rendered a new judgment by which it dismissed the action of E. Selezov requesting the annulment of decision No 6023 of the head of Rakvere office of MVRC of 6 July 2004 on the suspension of the right to drive.

6. E. Selezov filed an appeal in cassation against the judgment of Tartu Circuit Court of 12 November 2004 , in administrative matter No 3-245/2004. The appellant in cassation applies for the annulment of the judgment of Tartu Circuit Court and for the referral of the matter to the same court for a new hearing.

7. By its ruling of 3 March 2005, on the basis of § 70(1^1) of Code of Administrative Court Procedure, the Administrative Law Chamber of the Supreme Court referred the matter to the general assembly for a hearing, as it considered it necessary to review the constitutionality of subsections (1) and (10) of § 41^3 of TA.

OPINIONS OF COURTS AND PARTICIPANTS IN THE PROCEEDING

8. In its judgment of 26 July 2004 Jõhvi Administrative Court argued that the appellant has unlawfully been punished repeatedly for one and the same act, on the basis of provisions of law protecting one and the same social interest, because in the substantive sense the suspension of the right to drive pursuant to the procedure prescribed by § 41^3 of TA can be interpreted as a punishment and E. Selezov had already been punished by a fine for the same violation. Also, the principle of good administration had been violated, because the appellant had not been informed of the proceedings against him and he had been given no opportunity to submit arguments and defences, and that could have affected the decision made.

9. In its judgment of 12 November 2004 Tartu Circuit Court argued that irrespective of the fact that the suspension of the right to drive constitutes a punishment in the substantive sense, it can not be deemed as punishing a person twice for the same act and it does not violate the principle, established in § 23(3) of the Constitution, that punishing again for the same act shall be prohibited.

The opinion of the administrative court that upon making the decision on the suspension of the right to drive MVRC has violated the principles of good administration, is ungrounded and ambiguous.

The fact whether a person has been informed of the decision on the suspension of the right to drive can not serve as a ground for satisfying an action. The term of submitting an appeal against the decision and also the date when the decision becomes enforceable in regard of the person may depend on the notification of the decision, but this does not render the contested decision unlawful.

10. In his appeal in cassation E. Selezov argues that no one shall be punished again for an act, under one and the same provision of law or under provisions of law protecting one and the same social interest. As in the substantive sense the suspension of the right to drive on the grounds established in § 41^3(1) of TA constitutes a punishment, and the Penal Code does not provide for such supplementary punishment for a misdemeanour, the suspension of the right to drive is unlawful and the decision on the suspension of the right to drive must be annulled.

Subsection (10) of § 41^3 of TA does prescribe a special norm for the suspension of the right to drive, but in the interests of legal clarity each administrative act should be subject to review, clear and unambiguous. The contested administrative act is not reasoned.

The decision of MVRC has been made without carrying out an impartial administrative proceeding and without guaranteeing the right to be heard. Upon deciding on the suspension of the right to drive the principles of good administration should be observed and a decision should be preceded by all-sided weighing of the facts. The proceedings for suspension of the right to drive are administrative proceedings, and the provisions of the Administrative Procedure Act are applicable to these. The facts that the Traffic Act does not provide for the right of discretion or that it does not clearly provide for the obligation of the body,

conducting proceedings, to guarantee the right of a person to be heard, do not constitute characteristics of the non-existence of a proceeding. The allegation that the suspension of the right to drive forms an integrated whole with a misdemeanour proceeding is misleading.

It proceeds from § 11 of the Constitution that the restrictions of rights and freedoms shall be necessary and shall not prejudice the rights and freedoms restricted more than it is justifiable by the aim of the norm. There is no discussion over the suspension of the right to drive in a misdemeanour proceeding. The automatic suspension of the right to drive in the case of a misdemeanour is disproportionate, because in the case of a criminal offence the withdrawal of the right to drive is discretional and well-weighed.

11. In its written response to the appeal in cassation MVRC points out that § 11 of the Constitution constitutes no ground to regard § 41^3 of TA as unconstitutional. The suspension of the right to drive is necessary in the Republic of Estonia and does not distort the nature of the rights and freedoms restricted.

It is already in a misdemeanour proceeding that a person is informed of the proceedings for the suspension of his or her right to drive.

Essentially, MVRC has no right of discretion upon suspending the right to drive and the preclusion thereof has been the will of the legislator. Also, in its reply MVRC quotes the judgment of the general assembly of the Supreme Court of 25 October 2004, in matter No 3-4-1-10-04, pursuant to which the suspension of the right to drive is a consequence of a misdemeanour proceeding, forming an integrated whole therewith.

In its reply of 21 March 2005 the MVRC adheres to the opinions expressed before and does not consider the regulation of the suspension of the right to drive unconstitutional.

12. The Administrative Law Chamber of the Supreme Court is of the opinion that for the adjudication of the present matter it will be necessary to assess whether the provisions of the Traffic Act, regulating the suspension of the right to drive under § 41^3 of TA, including subsection (10) of § 41^3 of TA, are in conformity with the constitutional right of persons to procedure, and whether, upon the suspension of the right to drive pursuant to the procedure prescribed by Traffic Act, the weighting of the proportionality of punishments both separately and in the aggregate is guaranteed.

13. The Minister of Justice is of the opinion that subsections (1) and (10) of § 41^3 of TA are not unconstitutional. As an administrative body has no right of discretion upon deciding or choosing, the suspension of the right to drive should be treated as but the formalisation of the suspension of the right to drive. The possibility to submit challenges guarantees also the right of a person to be heard in defence against possible errors of form. The lack of the right of discretion in the regulation of the suspension of the right to drive can not serve as a reason for declaration of unconstitutionality of the regulation. The Ministry of Justice is of the opinion that the legislator has very thoroughly considered the relationship between and act and the consequences thereof. As a rule, the obligation to suspend the right to drive arises from a repeated commission of a violation. Thus, imposition of a partial punishment on a person for his last misdemeanour can not affect the extent of the consequence prescribed for the aggregate of misdemeanours committed by the person.

14. The Chancellor of Justice is of the opinion that § 41^3 of TA disproportionately infringes upon the prohibition of double punishment, established in § 23(3) of the Constitution; the guarantee of the recourse to the courts established in the first sentence of § 15 (1) of the Constitution; the general fundamental right to organisation and procedure established in § 14 of the Constitution; the general right to equality established in the first sentence of § 12(1) of the Constitution, and is in conflict with § 11, with the first sentence of § 12(1), with § 13(2), § 14, first sentence of § 15(1) and § 23(3) of the Constitution in their conjunction.

The Chancellor of Justice argues that the first sentence of subsection (10) of § 41^3 of TA in conflict with § 14 of the Constitution.

15. The legal Affairs Committee of the Riigikogu is of the opinion that the regulation of the suspension of

the right to drive is not unconstitutional.

PERTINENT PROVISIONS

16. Subsections (1) and (10) of § 413 of Traffic Act (RT I 2001, 3, 6, ... 2003, 78, 522) provide as follows:

"**§ 41^3. Suspension of right to drive by agency which issued driving licence**

(1) An agency which has issued a driving licence shall suspend the right to drive for three months if a decision on punishment has entered into force in respect of the person in a matter of a misdemeanour for violation of § 74^{19}, 74^{20}, 74^{21}, 74^{30} or 74^{31} of this Act.

[...]

(10) Suspension of the right to drive shall be formalised by a decision of the agency which issued the licence within three days as of receipt of the decision on punishment which has entered into force. The decision shall contain the information specified in clauses 41 (4) 1)-3), 5) and 6) of this Act. A copy of the decision shall be sent to the person by post."

OPINION OF THE GENERAL ASSEMBLY OF THE SUPREME COURT

I.

17. The Administrative Law Chamber of the Supreme Court referred the administrative matter to the general assembly for a hearing. The Chamber considered it necessary that the general assembly review the constitutionality of subsections (1) and (10) of § 41^3 of TA.

Pursuant to § 14(2) of the Constitutional Review Court Procedure Act a provision the constitutionality of which is to be assessed by the Supreme Court must be relevant. The general assembly is of the opinion that the provisions of the Traffic Act under discussion are of decisive importance in this administrative matter, as it is under these provisions that MVRC has suspended the applicant's right to drive. Thus, the norms are relevant. (See also judgments of the general assembly of the Supreme Court of 22 December 2000, in matter No 3-4-1-10-00 - RT III 2001, 1, 1, § 10; and of 28 October 2002, in matter No 3-4-1-5-02 - RT III 2002, 28, 308, § 15.)

II.

18. The applicant in cassation argues that his rights have been violated by the fact that by the imposition of a fine and by the suspension of the right to drive for a misdemeanour he has been punished repeatedly for one and the same act and under the provisions protecting one and the same social interest, i.e. the principle of *ne bis in idem* has been violated. The general assembly of the Supreme Court points out that it has assessed the suspension of the right to drive against the background of this principle in its judgment of 25 October 2004, in matter No 3-4-1-10-04 (RT III 2004, 28, 297). Proceeding from that judgment the suspension of the right to drive under subsections (1), (4) and (8) of § 41^3 of TA can not be regarded as a violation of § 23(3) of the Constitution. The general assembly can observe no facts precluding the applicability of this opinion in the present matter. Thus, the suspension of E. Selezov's right to drive under § 41^3(1) of TA is not in conflict with § 23(3) of the Constitution.

III.

19. Next, the general assembly shall analyse the allegations of the appellant in cassation that the subsections (1) and (10) of § 41^3 of TA, serving as a ground for the suspension of the right to drive, are in conflict with the provisions of the Constitution prescribing for a constitutional right to procedure, including the right to be heard before a decision is taken.

The general assembly has repeatedly argued (see judgment of 25 October 2004, in matter No 3-4-1-10-04; judgment of 25 October 2004, in matter No 3-3-1-29-04; judgment of 17 June 2005, in matter No 3-4-1-2-05) that although, in the formal sense, misdemeanour proceedings and the suspension of the right to drive by MVRC as an administrative procedure constitute independent proceedings, they can still be considered as an integrated whole. That is why the fact whether the right to procedure, guaranteed by § 14 of the Constitution, is guaranteed, shall be assessed in regard to the entirety of the referred proceedings.

20. The general assembly has examined the right to be heard upon the suspension of the right to drive in its judgment of 27 June 2005, in matter No 3-4-1-2-05. Pursuant to the referred judgment the right to be heard is primarily guaranteed by the fact that a person has a possibility to submit defences related to the suspension of the right to drive within a misdemeanour proceeding, and that the Traffic Act does not preclude MVRC to hear a person (see §§ 34 and 35 of the referred judgment). At the same time the general assembly has admitted that proceeding from the regulation in the Traffic Act, the timely submission of requests and explanations concerning the facts excluding the suspension of the right to drive may be impeded, restricting the right to fair and effective procedure, arising from § 14 of the Constitution, and there is an infringement of § 14 of the Constitution (§ 36 of the referred judgment).

In its judgment of 27 June 2005, in matter No 3-4-1-2-05, the general assembly held that the infringement of § 14 of the Constitution is not intensive and is outweighed by the public interest in effective proceeding of the matters of suspension of the right to drive. It is for the same reasons that subsection (10) of § 41^3 of TA, establishing the obligation to formalise a decision on suspension of the right to drive within three days, is not unconstitutional, either (see § 37 of the referred judgment).

IV.

21. The appellant in cassation has raised the issue of violation of the principle of proportionality, arising from § 11 of the Constitution, upon suspension of the right to drive. The appellant in cassation argues that the disproportionality lies in the fact that in the case of a misdemeanour the right to drive is suspended automatically, whereas in the case of a criminal offence the withdrawal of the right to drive is discretionary.

22. The general assembly is of the opinion that in essence, the appellant in cassation has raised the question of whether the different regulation of the suspension of the right to drive of a person who has committed a traffic misdemeanour, and of the withdrawal of the right to drive of a person who has committed a traffic criminal offence, amounts to arbitrary different treatment of these groups of persons, i.e. to a violation of the equality before the law principle, arising from the first sentence of § 12(1) of the Constitution. The general assembly has already, in its judgment of 27 June 2005, in matter No 3-4-1-2-05, answered in the negative to this question by finding that persons who have committed traffic misdemeanours and persons who have committed traffic criminal offences are not comparable groups for the purposes of the suspension or withdrawal of the right to drive (see §§ 48-54 of the referred judgment).

V.

23. For the above reasons the general assembly of the Supreme Court is of the opinion that the appeal in cassation of E. Selezov shall be dismissed and the judgment of Tartu Circuit Court of 12 November 2004 upheld.

Märt Rask, Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Julia Laffranque, Jaak Luik, Jüri Põld, Harri Salmann, Tambet Tampuu and Peeter Vaher

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