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## Constitutional judgment 3-4-1-8-05

### **RULING OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT**

**No. of the case** 3-4-1-8-05

**Date of decision** 25 May 2005

**Composition of court** Chairman Märt Rask, members Tõnu Anton, Eerik Kergandberg, Ants Kull, Jüri Pöld

**Court case** Appeals of Rutt Raudkepp against resolution No 101 of the Riigikogu of 21 March 2005, against resolution No 799 of the President of the Republic of 21 March 2005, against resolution No 804 of the President of the Republic of 31 March 2005, against resolution of the Riigikogu of 12 April 2005, against resolution No 811 of the President of the Republic of 12 April 2005, and against resolution No 812 of the President of the Republic of 13 April 2005.

**Court hearing** Written proceeding

#### **Decision**

**To reject the appeals of Rutt Raudkepp**

#### **FACTS AND COURSE OF PROCEEDING**

1. On 31 March 2005 Rutt Raudkepp submitted an appeal to the Supreme Court applying for the invalidation of resolution No 101 of the Riigikogu of 21 March 2005, by which the Riigikogu expressed no confidence in the Minister of Justice Ken-Marti Vaher, and for invalidation of resolution No 799 of the President of the Republic of 21 March 2005, by which K.-M. Vaher was released from the office of Minister of Justice. R. Raudkepp argues in her appeal that the referred resolutions violate her right to safe life, as the release from office of the Minister of Justice was prompted by his activities for restraining crime in Estonia. Furthermore, there was no correct justification for expressing no confidence in the Minister of Justice. The Supreme Court set a term to R. Raudkepp for elimination of deficiencies in her appeal, asking her to specify how the contested resolutions of the Riigikogu and the President of the Republic violate her subjective rights.

2. On 15 April 2005 R. Raudkepp submitted an application to the Supreme Court for the extension of time limit for eliminating deficiencies due to the delay of relevant documents. On the same date R. Raudkepp submitted an application to the Supreme Court for legal aid at the expense of the state, requesting that an advocate be appointed to her to represent her in the Supreme Court and to prepare the documents to supplement the appeal of 31 March 2005.

3. On 22 April 2005 R. Raudkepp addressed the Supreme Court with a petition that it initiate the constitutional review of resolution No 804 of the President of the Republic of 31 March 2005, by which Andrus Ansip was appointed the Prime Minister; resolution of the Riigikogu of 12 April 2005, by which the candidate for Prime Minister was authorised to form the government; resolution No 811 of the President of the Republic of 12 April 2005, by which the Government of the Republic, headed by Prime Minister Andrus Ansip, was appointed to office; and resolution No 812 of the President of the Republic of 13 April 2005, by which the Government of the Republic, headed by Juhan Parts, was released from office. According to the reasoning of R. Raudkepp she can not accept a Prime Minister who has gained the office in a dishonest way and by violating the Constitution, including by instigating political hatred through accusing the Minister of Justice. R. Raudkepp also argues that the President of the Republic could have rejected the letter of resignation of the Government of the Republic headed by J. Parts, because the expression of no confidence in Minister of Justice K.-M. Vaher had not been sufficiently advised and justified. In the application submitted on the same date R. Raudkepp requested that the 10-days' term for contesting resolution No 804 of the President of the Republic of 31 March 2005 be restored due to the fact that timely preparation of the appeal was impracticable for her.

4. In her letter, received by the Supreme Court on 13 May 2005, R. Raudkepp points out that the resolutions contested in her appeal of 31 March 2005 violate her rights under §§ 3, 13 and 32 of the Constitution, and once again requests that her appeals of 31 March and 22 April 2005 be accepted, and that legal aid be granted to her under the State Legal Aid Act for further supplementing her appeal of 31 March 2005.

5. On 18 May 2005 R. Raudkepp submitted to the Supreme Court a supplement to her appeal of 31 March 2005, pointing out that pursuant to the preamble of the Constitution she has an individual right to a just and secure state functioning in accordance with the Constitution and the law. The contested resolutions of the Riigikogu and the President of the Republic violate the referred right.

## CONTESTED RESOLUTIONS

6. Resolution No 101 of the Riigikogu of 21 March 2005 "Expression of no confidence in Minister of Justice Ken-Marti Vaher" (RT I 2005, 17, 101) reads as follows:

"On the basis of § 65(13) of the Constitution of the Republic of Estonia and §§ 133 and 134 of the Riigikogu Rules of Procedure Act the Riigikogu decides the following: to express no confidence in Minister of Justice Ken-Marti Vaher."

7. Resolution No 799 of the President of the Republic of 21 March 2005 "**Introduction of Changes in the composition of the Government of the Republic**" (RTL 2005, 34, 486) reads as follows:

"In connection with the expression of no confidence I release Ken-Marti Vaher from the composition of the Government of the Republic, from the office of the Minister of Justice. Basis: § 97(5) of the Constitution of the Republic of Estonia."

8. Resolution No 804 of the President of the Republic of 31 March 2005 "**Appointment of A. Ansip the candidate for Prime Minister**" (RTL 2005, 37, 532) reads as follows:

"I appoint Andrus Ansip the candidate for Prime Minister and assign him the task of formation of the Government of the Republic. Basis: § 78(9), § 89(1) of the Constitution of the Republic of Estonia."

9. Resolution of the Riigikogu of 12 April 2005 "Authorising the candidate for Prime Minister Andrus Ansip to form the government" (RT I 2005, 21, 133) reads as follows:

"In accordance with § 65(5) and § 89(2) of the Constitution of the Republic of Estonia the Riigikogu decides the following: to authorise the candidate for Prime Minister Andrus Ansip to form the Government."

**10. Resolution No 811 of the President of the Republic of 12 April 2005 "Appointment to office of the Government of the Republic"** (RTL 2005, 42, 601):

"I appoint to office the Government of the Republic in the following composition: [the list follows]. Basis: § 78(10), § 89(3) of the Constitution of the Republic of Estonia."

**11. Resolution No 812 of the President of the Republic of 13 April 2005 "Release from office of the Government of the Republic"** (RTL 2005, 42, 602) reads as follows:

"I release from office the Government of the Republic, headed by Juhan Parts, appointed to office on 9 April 2003 (RTL 2003, 47, 694; 107, 1665; 2004, 36, 601; 124, 1920; 124, 1921; 148, 2250; 2005, 20, 250; 23, 320; 34, 486) in connection with the assuming of office of the new government on 13 April 2005. Basis: § 78(10), § 92(2) of the Constitution of the Republic of Estonia."

## **OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER**

**12.** R. Raudkepp has contested six resolutions of the Riigikogu and of the President of the republic in the Supreme Court. In regard to resolution No 804 of the President of the Republic of 31 March 2005 R. Raudkepp submitted an application to the Supreme Court requesting the restoration of the 10-days' term for contesting the resolution. The Supreme Court shall satisfy the request and shall examine all the resolutions contested by R. Raudkepp.

**13.** The submission of appeals against the resolutions of the Riigikogu and the President of the Republic is regulated by the Constitutional Review Court Procedure Act (RT I 2002, 29, 174; ... RTI 2004, 56, 405; hereinafter 'CRCPA'). Pursuant to § 16 of CRCPA a person who finds that a resolution of the Riigikogu violates his or her rights may submit to the Supreme Court a request for the repeal of the resolution of the Riigikogu. Pursuant to § 18 of CRCPA a person who finds that a resolution of the President of the Republic concerning appointment to or release from office of an official violates his or her rights, may submit to the Supreme Court a request for the repeal of the resolution.

**14.** The Constitutional Review Court Procedure Act, which was in force from 24 May 1993 until 30 June 2002 (RT I 1993, 25, 435; 2002, 29, 174) did not provide for a possibility for individuals to submit appeals against resolutions of the Riigikogu or the President of the Republic, violating their rights. It was possible to contest the resolutions pursuant to administrative court procedure. When subjecting the referred resolutions to constitutional review procedure by the Constitutional Review Court Procedure Act, which entered into force on 1 July 2002, the legislator aimed at allowing for speedy and final resolution of significant issues of constitutional law.

**15.** At the same time the legislator did not mean to provide for the unlimited right of appeal to individuals or for the unlimited competence of the Supreme Court to review the resolutions of the Riigikogu and the President of the Republic. The aim of the legislator upon enacting §§ 16 and 18 of the CRCPA was to give the possibility of recourse to the Supreme Court primarily to those persons who have been unconstitutionally released from or not appointed to office. It appears from the documents of the case that R. Raudkepp is not one of such persons.

**16.** As a rule, Estonian legal order does not recognise appeals for the protection of the interests of other person or a public interest. Pursuant to § 7(3) of the Code of Administrative Court Procedure (RT I 1999, 31, 425; ... RT I 2004, 56, 403), and § 3(2) of the Code of Civil Procedure, proclaimed by the President of the Republic on 9 May 2005 but not yet entered into force, filing of actions in a public interest or for the protection of the interests of other persons is allowed only in the cases exhaustively enumerated in the law. Upon submitting an appeal on the basis of the Constitutional Review Court Procedure Act, which does not provide for such exceptions, the applicant must show how his or her rights are being violated. The allegations of R. Raudkepp that the expression of no confidence in Minister of Justice K.-M. Vaher, his release from office and the resignation of the Government of the Republic as a result of this and the

appointment of the new government violated her subjective right to secure life and observance of the law in the Republic of Estonia are irrelevant, bearing in mind the specific features of the relationships regulated by §§ 16 and 18 of CRCPA.

**17.** That is why the Supreme Court is not competent to hear the appeals, which are apparently submitted under §§ 16 and 18 of CRCPA, whereas in fact they are submitted for the protection of the interests of others or public interests. On the basis of the third sentence of § 20(3) of CRCPA, the Chamber shall reject the appeal of R. Raudkepp.

**18.** Neither shall the Chamber satisfy the application of R. Raudkepp for state legal aid. Pursuant to § 7(1)2) of State Legal Aid Act, state legal aid shall not be granted if the applicant cannot have the right for the protection of which he or she is applying for state legal aid.

Märt Rask, Tõnu Anton, Eerik Kergandberg, Ants Kull, Jüri Põld

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