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Home > Constitutional judgment 3-3-1-60-03

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JUDGMENT OF THE SUPREME COURT EN BANC

No. of the case	3-3-1-60-03
Date of judgment	25 February 2004
Composition of court	Chairman Uno Lõhmus and members Tõnu Anton, Jüri Ilvest, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Jaak Luik, Jüri Pöld, Harri Salmann, Tambet Tampuu and Peeter Vaher
Court Case	Action of Nikolai Irhin applying for declaration of unlawfulness of the acts of the Tallinn Police Prefecture and for requiring the issue of a weapons permit.
Disputed judgment	Judgment of the Administrative Law Chamber of the Tallinn Circuit Court of 21 April 2003 in administrative matter no. 2-3/209/2003
Ground for proceeding in the Supreme Court	Appeal in cassation of Nikolai Irhin
Type of proceeding	Written proceeding

DECISION

1. To declare § 30(2) of the Weapons Act invalid to the extent that it establishes the existence of a work permit as a condition for an alien who is staying in Estonia on the basis of a temporary residence permit for possessing a hunting gun for hunting.
2. To declare § 30(2) of the Weapons Act invalid to the extent that it establishes the holding of a weapons permit for such type of weapon which has been granted by a competent authority of the state of the alien's permanent residence as a condition for an alien who is staying in Estonia on the basis of a temporary residence permit and has no permanent residence in a foreign state for possessing a hunting gun for hunting.
3. To postpone the entering into force of clauses 1 and 2 of this decision for four months as of the

pronouncement of the judgment.

4. To satisfy N. Irhin's appeal in cassation partly.

5. To set aside the judgment of the Tallinn Administrative Court of 4 October 2002 in administrative matter no. 3-1044/2002 and the judgment of the Tallinn Circuit Court of 21 April 2003 in administrative matter no. 2-3/209/2003, and to render a new judgment.

6. To satisfy the petition of N. Irhin to declare the refusal of the Tallinn Police Prefecture to hear the application of N. Irhin for acquisition of a weapons permit unlawful, and require that after clauses 1 and 2 of this decision have entered into force the Tallinn Police Prefecture hear the application of N. Irhin for issuing the weapons permit. To dismiss the petition of N. Irhin to declare the refusal to issue a weapons permit unlawful.

7. To order the payment of state fee of 10 kroons by the Tallinn Police Prefecture for the benefit of N. Irhin.

8. To return the security.

FACTS AND COURSE OF PROCEEDING

1. In April 2002 Nikolai Irhin (born 26 January 1924), a citizen of the Russian Federation, a military pensioner of the Russian Federation, who is living in Estonia on the basis of a temporary residence permit, submitted an application to the Tallinn Police Prefecture for acquiring a weapons permit on the basis of § 30(2) of the Weapons Act (hereinafter "the WA").

2. The chief superintendent of the Tallinn Police Prefecture informed N. Irhin on 31 May 2002 that his application will not be heard on the basis of subsections (2) and (3) of § 15 of the Administrative Procedure Act (hereinafter "the APA"), because he had not submitted, by 25 May 2002, all the documents enumerated in § 35(2)2) of the WA, proving that he meets the requirements established by § 20(2) of the WA.

3. On 26 June 2002 N. Irhin filed **an action** with the Tallinn Administrative Court requesting that the acts of the Tallinn Police Prefecture - refusal to hear the application for acquisition of weapons permit and refusal to issue a weapons permit - unlawful, and to require that the police prefecture issue a weapons permit to the applicant on the basis of § 30(2) of the WA. N. Irhin justified his action as follows: the applicant has been living in Estonia since 1968 and he held a weapons permit for hunting until 1998. The Weapons Act in force at the referred time did not permit to extend the weapons permit and he deposited his hunting gun into storage with the police prefecture. The amendment to the Weapons Act, which entered into force on 31 March 2002, entitled also a person who is staying in Estonia on the basis of a temporary residence permit to apply for a weapons permit. The applicant submitted, together with the application for a weapons permit, a copy of his passport, two photographs, document proving the payment of state fee and a pension certificate. The Tallinn Police Prefecture refused to hear the application, because from among the documents referred to in § 35(2) of the WA the applicant had failed to submit the work permit and a weapons permit for such type of weapon granted to him by the state of his permanent residence (the Russian Federation). The applicant argued that the referred requirements were not legal. There is no need for him, being a pensioner, to acquire a work permit. N. Irhin considers the Republic of Estonia to be the state of his permanent residence.

4. The Tallinn Administrative Court satisfied the action partly: it declared unlawful the refusal of the Tallinn Police Prefecture to hear the application for a weapons permit submitted by N. Irhin. The action was dismissed in other respects. Pursuant to the reasoning of the judgment there is no reasonable justification to why an alien who has a work permit is allowed to acquire a weapons permit, and an alien who is a pensioner, is not. Such a restriction would be in conflict with the principle of equality established in § 9 of the Constitution, and with the principle of proportionality established in § 11 of the Constitution.

5. An appeal against the judgment of the Tallinn Administrative Court was filed by the Tallinn Police Prefecture, requesting that the judgment of the Tallinn Administrative Court be partly annulled and a new judgment, dismissing the action of N. Irhin, rendered.

6. The Tallinn Circuit Court satisfied the appeal of the Tallinn Police Prefecture and annulled the

judgment of the Tallinn Administrative Court to the extent that it declared unlawful the Tallinn Police Prefecture's refusal to hear N. Irhin's application for the acquisition of a weapons permit on the ground that he had not submitted a weapons permit for such type of weapon which had been granted by the competent authority of the Russian Federation. The action of N. Irhin was dismissed. Pursuant to the reasoning of the judgment it is possible to conclude, interpreting §§ 30(2) and 35(7) of the WA, that it was the will of the legislator not to issue a weapons permit to a person who is staying in Estonia on the basis of a temporary residence permit, except when the alien holds a valid weapons permit, issued by the state of his permanent residence. The issue of weapons permits on the basis of § 30(2) of the WA essentially duplicates the issue of weapons permits to aliens. The court found that such facts as for how long a person has been living in Estonia, for what reasons he has not been granted a permanent residence permit or which state he considers to be his place of permanent residence, are of no relevance for the adjudication of the present matter. N. Irhin did not submit a pertinent weapons permit and without such permit it is not possible to hear the application for the acquisition of a weapons permit.

7. N. Irhin filed an **appeal in cassation** against the judgment of the Tallinn Circuit Court, requesting that the judgment of the Tallinn Circuit Court be annulled and a new judgment rendered.

8. By the ruling of 16 October 2003 the Administrative Law Chamber of the Supreme Court referred the matter to the Supreme Court *en banc* for hearing, because the Chamber found that § 30(2) of the WA may be in conflict with the Constitution.

PERTINENT PROVISIONS OF LAW

9. Since 31 March 2002, § 30 of the Weapons Act (RT I 201, 65, 377; 102, 673) is in force in the following wording:

"§ 30. Types of weapons permitted for aliens

(1) An alien who is at least 18 years of age who is staying in Estonia on the basis of a permanent residence permit may acquire and own pneumatic weapons, gas weapons and guns with a smoothbore barrel. An alien may own sporting firearms with a rifled barrel and combination hunting guns on the condition that such weapons are stored in a weapons storage room of a hunting or sports organisation or of a person who holds a corresponding activity licence.

(2) An alien who is staying in Estonia on the basis of a temporary residence permit and a work permit may acquire and own a hunting gun or sporting firearm for hunting or engaging in a corresponding sport pursuant to the procedure established by this Act on the condition that the alien holds a weapons permit for such type of weapon which has been granted by a competent authority of the state of the alien's permanent residence. In such cases, firearms with rifled barrels shall be stored in a weapons storage room of a hunting or sports organisation or of a person who holds a corresponding activity licence.

(3) An alien who is staying legally in Estonia, who is not listed in subsections (1) or (2) of this section and who is at least 18 years of age may, on the basis of an acquisition permit issued by the Police Board, acquire a weapon and ammunition for the purposes of taking the weapon or ammunition out of Estonia on the condition that he or she holds a permit issued by a competent authority of the state of his or her permanent residence for the acquisition of such type of weapon or ammunition and that he or she assumes the obligation to take the weapon or ammunition with him or her upon departure from Estonia.

(4) An alien who is staying in Estonia for a sports event, exercises or hunting may acquire ammunition on the basis of a written application made by the person who or agency which invited him or her and upon submission of a temporary weapons import permit. The quantity of ammunition acquired on any single occasion shall not exceed the quantity indicated in subsection 46 (4) of this Act.

(5) An employee of a diplomatic or consular representation of a foreign state who is a foreign citizen may acquire and possess a weapon, except a truncheon, pursuant to the procedure provided by this Act, on the

application of the Ministry of Foreign Affairs and on the basis of a permit granted by the police prefecture of his or her residence on the condition that he or she holds a weapons permit of the state of his or her citizenship."

JUSTIFICATIONS OF PARTICIPANTS IN THE PROCEEDING

10. The Chancellor of Justice argues that the requirement of a weapons permit for such type of weapon granted by a competent authority of the alien's state of permanent residence established in § 30(2) of the WA is unclear, it allows for different interpretations, including an interpretation to the disadvantage of a person, and it is thus in conflict with the principle of legal clarity, proceeding from § 13(2) of the Constitution. The requirement of a work permit of § 30(2) of the WA constitutes a disproportionately narrow possibility for an alien, staying in Estonia on the basis of a temporary residence permit, to prove the existence of a legal income and, through this, sufficient reliability for the acquisition of a weapons permit from the state. That is why § 30(2) of the WA is in formal conflict with § 19(1) of the Constitution in conjunction with the principle of legal clarity, proceeding from § 13(2) of the Constitution, to the extent that the provision establishes a condition for the acquisition of a weapons permit that the applicant hold "a weapons permit for such type of weapon which has been granted by a competent authority of the state of the alien's permanent residence". § 30(2) of the WA is in substantial conflict with § 19(1) of the Constitution in conjunction with the second sentence of § 11 of the Constitution to the extent that it establishes the existence of a work permit as a condition for application for a weapons permit, without providing for other possible legal sources of income. The Chancellor of Justice argues also that the requirement of submitting a work permit, established in § 30(2) of the WA, is in conflict with the principle of equal treatment, provided for in § 12 of the Constitution, and is thus in substantive conflict with the second sentence of § 11 of the Constitution, because the provision does not provide for other possibilities for an alien to prove the existence of legal income.

11. The Legal Affairs Committee of the Riigikogu argues that the requirement of a work permit as a mandatory prerequisite upon applying for a weapons permit for a person who is in the retirement age and is staying in Estonia on the basis of a temporary residence permit is in conflict with §§ 11 and 12 of the Constitution. It is further argued in the written opinion of the Legal Affairs Committee that the result of declaration of invalidity of § 30(2) of the WA to the contested extent would be that persons who have a temporary residence permit will be able to acquire a hunting gun or a sporting firearm without undergoing a medical examination and without passing an examination on the knowledge of the requirements of legislation and a practical test on handling firearms, referred to in § 35(5) of the WA. In its written opinion the Legal Affairs Committee of the Riigikogu supports the proposal of the Constitutional Committee of the Riigikogu to request that the entering into force of the court judgment be postponed for six months on the basis of § 58(3) of the Constitutional Review Court Procedure Act (hereinafter "the CRCPA").

12. The Minister of Justice is of the opinion that under § 30(2) of the WA, upon issuing weapons permits, persons who have a work permit and persons who do not have a work permit are treated unequally and thus the provision is in conflict with § 19(1) of the Constitution in conjunction with § 12(1). The provision is also in conflict with the principle of legal clarity, expressed in § 13(2) of the Constitution, and with § 19(1) of the Constitution in conjunction with § 11 thereof.

13. It is argued in the written opinion of the Minister of Internal Affairs that the existence or non-existence of a work permit has no causal link to either hunting or engaging in sport. The requirement of work permit violates the principle of equal treatment, restricting the rights of those aliens who, for some reason, do not have a work permit. The referred provision is in manifest conflict with what is provided in § 12 of the Constitution - social status - and may also be in conflict with § 11 of the Constitution. For the purposes of § 30(2) of the WA the state of permanent residence is not Estonia but some other state (state of citizenship or state of origin, etc.) even if the alien resides in Estonia permanently. Thus, the requirement of a weapons permit granted by a competent authority of the state of permanent residence is not unconstitutional.

OPINION OF THE SUPREME COURT *EN BANC*

14. First, the Supreme Court *en banc* shall form an opinion on the pertinence of § 30(2) of the WA (part I). Next, the infringement of free self-realisation will be dealt with (part II) and the proportionality thereof (part III). Lastly, the Supreme Court *en banc* shall give reasons for the decision in the matter (part IV) and adjudicate the appeal of N. Irhin (part V).

I.

15. The title of § 30 of the WA reads as follows: "Types of weapons permitted for aliens". The provision is divided into five subsections. The first subsection deals with the acquiring and possessing of a weapon by an alien staying in Estonia on the basis of a permanent residence permit. The second subsection regulates the acquisition and possession of a weapon by an alien who is staying in Estonia on the basis of a temporary residence permit. The third subsection regulates the acquisition of a weapon or ammunition for the purposes of taking the weapon or ammunition out of Estonia by a person who is staying in Estonia on some other legal basis. The fourth and fifth subsections regulate issues pertaining to acquisition of ammunition or a weapon by an alien whose stay in Estonia has a specific purpose or ground.

Thus, § 30(2) of the WA regulates the acquisition and possession of weapons or ammunition by all aliens having a legal basis for staying in Estonia.

16. In the administrative matter there is no dispute about the fact that N. Irhin, born 26 January 1924, is a person staying in Estonia on the basis of a temporary residence permit. The acquisition and possession of a weapon by a person staying in Estonia on the basis of a temporary residence permit is regulated by § 30(2) of the WA. Consequently, the referred provision is pertinent for the adjudication of this administrative matter.

II.

17. Next, it will be necessary to ascertain whether the provision infringes upon any of the fundamental rights. The Constitutional Review Chamber of the Supreme Court has observed (see judgment of 6 October 2000, paragraph 12, in case no. 3-4-1-9-2000 - RT III 2000, 21, 233), that the Constitution does not state that the right to acquire or possess a weapon is a basic right of every person, nevertheless, the person's right to acquire or possess a weapon may fall under the right to free self-realisation, established in § 19(1) of the Constitution. The Supreme Court *en banc* has further specified this view and held that hunting is also a way of free self-realisation. The Supreme Court *en banc* has observed in the same judgment that although hunting does not always presuppose carrying and using a weapon, still hunting with a weapon is one of the oldest ways of hunting and it is recognised by the state (see judgment of 11 October 2001, paragraph 13, in case no. 3-4-1-7-01 - RT III 2001, 26, 280).

18. It appears from the materials of the administrative matter that N. Irhin had applied for a weapons permit with the purpose of keeping and using the hunting gun he possesses for hunting. N. Irhin has been a hunter for a long time and belongs to the association of hunters up to the present time. N. Irhin had held a weapons permit for hunting until 1998. The Weapons Act in force at the referred time did not permit to extend the weapons permit and he deposited his hunting gun into storage with the police prefecture. On the basis of the wording of the Weapons Act, which entered into force on 31 March 2002, also a person who was staying in Estonia on the basis of a temporary residence permit acquired a right to apply for a weapons permit.

19. On the basis of § 35(2) of the WA a prerequisite for acquiring a weapons permit is that a person shall submit documents proving that he meets the requirements established in § 29 or § 30 of the WA. As N. Irhin does not meet all the requirements established in § 30(2), it was not possible to make a decision on the grant of a weapons permit to him.

Pursuant to § 34(2) of the WA a weapons permit held by a natural person grants the holder of the permit the right to store, carry and convey a weapon and ammunition therefore pursuant to the procedure and under the

conditions provided for in this Act and legislation issued on the basis thereof, and also the right to acquire ammunition which corresponds to the model of the weapon. Thus, hunting with a gun will only be possible if a person holds a weapons permit. As § 30(2) of the WA prevents the grant of a weapons permit to N. Irhin, the Supreme Court *en banc* is of the opinion that the provision infringes upon N. Irhin's right to free self-realisation.

20. The right to free self-realisation, included in § 19(1) of the Constitution, may be restricted by law, whereas it has to be observed that the restriction should be necessary in a democratic society and the means used should be proportional to the desired aim. Restrictions must not prejudice the interests or rights, protected by law, to greater extent than justifiable by the legitimate objective of the norm (see judgment of the Constitutional Review Chamber of 17 March 1999, paragraph 13, in case no. 3-4-1-1-99 - RT III 1999, 9, 89, and judgment of 28 April 2000, paragraph 13, in case no. 3-4-1-6-2000 - RT III 2000, 12, 125).

21. The Constitutional Review Chamber and the Supreme Court *en banc* have found earlier that the need to prevent danger to life and health of persons was a legitimate aim of restrictions on the possession of weapons. A weapon as a device or thing can be used to harm a living object and that is why the procurement of weapons is restricted and specific rules and requirements have been established for the procurement, commerce and supervision thereof. These requirements have been provided for in general interests and the interests of an individual have been limited or restricted in the interest of other persons (see judgment of Constitutional Review Chamber of 6 October 2000, paragraph 17, in case no. 3-4-1-9-2000 - RT III 2000, 21, 233, and judgment of the Supreme Court *en banc* of 11 October 2001, paragraph 16, in case no. 3-4-1-7-01 - RT III 2001, 26, 280).

The Supreme Court *en banc* is of the opinion that in addition to the referred aims also the need to guarantee national security and public order may serve as legitimate and justified aims for restricting the possession of weapons. The Supreme Court *en banc* admits in this context that in addition to the referred aims there may exist other weighty circumstances justifying the restrictions on the possession of weapons.

III.

22. Having established that the restrictions on the possession of weapons have a legitimate aim, the proportionality of those restrictions is to be checked next. § 30(2) of the WA establishes the following restrictions on the acquisition and possession of a weapon by an alien who is staying in Estonia on the basis of a temporary residence permit:

1) requirement of holding a work permit;

2) requirement that a person hold a weapons permit for such type of weapon which has been granted by a competent authority of the state of his permanent residence.

Firstly, the Supreme Court *en banc* shall assess the proportionality of the requirement of a work permit, and after that, the proportionality of the requirement of a weapons permit granted by the state of permanent residence.

Beginning the analysis of the proportionality of these restrictions the Supreme Court *en banc* observes firstly, in regard to both restrictions, that neither the explanatory letter to the Weapons Act nor the shorthand notes of the sittings of the Riigikogu conducted for the adoption of the Weapons Act indicate why namely those restrictions were imposed on the possession of weapons.

23. Pursuant to § 9(1) of the Aliens Act an alien shall hold a work permit to work in Estonia. Neither the Aliens Act nor any other legislation require that a person staying in Estonia on the basis of a temporary residence permit should work here. Thus, there may be a great number of persons staying in Estonia who, for some reason such as being engaged in studies, due to advanced age, the existence of some other sufficient income or for some other reason, do not work and do not hold a work permit. N. Irhin as a pensioner

advanced in years has not applied for a work permit.

24. Proceeding from § 131(2) of Aliens Act a work permit may be issued to an alien who has a residence permit. Pursuant to § 13¹(3) of Aliens Act the Citizenship and Migration Board shall refuse to issue a work permit if the alien lacks a permit for residence in Estonia or if other circumstances exist which are the basis for refusal to issue a work permit.

Neither the Aliens Act nor the implementing legislation thereof specify the other grounds for refusal to issue a work permit. The Supreme Court *en banc* has no ground to believe that upon issuing a work permit it is checked, among other things, whether a person is sufficiently reliable for possessing a weapon, that is whether the person might constitute a danger to the life and health of others, to the national security or public order, if he or she possessed a weapon. The existence of a work permit does not show whether a person wishes and whether his knowledge, skills and social maturity are such as to make him capable of handling a weapon so that it would not constitute a danger to public order and security.

25. In this context the Supreme Court *en banc* observes that even when presuming that the aim of the requirement of a work permit is that only an alien with a legal income could possess a weapon, there is no reason to take into consideration only the income gained through work. Proceeding from § 4³ of Aliens Act, in addition to lawfully earned remuneration, also income received from lawful business activities or property, pensions, scholarships, support, benefits paid by a foreign state and the maintenance ensured by family members earning legal income are deemed to be legal income. Thus, the possibilities of legal income are much wider and there is no reason to believe that a person earning remuneration for work as a legal income is more reliable in any respect than a person gaining legal income from some other source. Taking into account, from among the possible sources of legal income, only remuneration for work is a disproportional restriction in regard to all those persons who have some other legal income.

Proceeding from the aforesaid the requirement of a work permit established in § 30(2) of the WA is a disproportional restriction in regard to those aliens, staying in Estonia on the basis of temporary residence permits, who do not hold a work permit for some reason or another.

26. Analysing the proportionality of the requirement of a weapons permit issued by the state of permanent residence the meaning of "state of permanent residence" for the purposes of § 30(2) of the WA is to be ascertained first. Neither the Weapons Act nor other legislation of general application specify the term "state of permanent residence".

27. Both Estonia or a foreign state could be regarded to be "a state of permanent residence". Nevertheless, § 30(2) of the WA can not be interpreted to mean Estonia as the state of permanent residence. That is due to the fact that if an alien already held a valid weapons permit granted by an Estonian competent authority, there would be no need for him or her to apply for a new and analogous one in Estonia. Furthermore, it has to be taken into consideration that pursuant to § 4(1) of the Aliens Act a person who is not an Estonian citizen or an alien not residing in Estonia on the basis of a permanent residence permit can not be deemed a permanent resident of Estonia.

That is why the Supreme Court *en banc* argues that the term "state of permanent residence" of § 30(2) of the WA means a foreign state and not Estonia.

28. It appears from the materials of the case that N. Irhin was born in 1924, has permanently resided in Estonia since 1968 and has no permanent residence in a foreign state. That is why N. Irhin has to be treated as a person without a permanent residence in a foreign country.

29. Next, the Supreme Court *en banc* shall form an opinion on the proportionality of the requirement of a weapons permit granted by the state of permanent residence only to the extent that it affects those persons who are permanently residing in Estonia and have no permanent residence in a foreign state.

30. The requirement of proportionality means, *inter alia*, that it should be possible, both in the legal sense

and *de facto*, to fulfil the requirements established by law. If it is not possible to fulfil a requirement proceeding from law, the requirement can not be a proportional one.

As for the purposes of § 30(2) of the WA "the state of permanent residence" means a foreign state, it is impossible for those person who do not have a permanent residence in a foreign state, to fulfil the requirement to submit a weapons permit granted by the state of permanent residence. That is why the Supreme Court *en banc* is of the opinion that such a restriction on the possession of weapons is disproportional in regard to persons without a permanent residence in a foreign state, and consequently also violates the fundamental right to free self-realisation.

31. The Supreme Court *en banc* has previously found that § 30(2) of the WA disproportionately restricts the right to free self-realisation. This finding amounts to the finding of unconstitutionality of the provision and the Supreme Court *en banc* does not consider it necessary to analyse whether the referred provision also violates the general right of equality, established in § 12 of the Constitution.

IV.

32. As the Supreme Court *en banc* has come to the conclusion that the requirement of a work permit from a person who is staying in Estonia on the basis of a temporary residence permit as a condition restricting the possession of a weapon is unconstitutional, § 30(2) of the WA is to be declared invalid in that respect.

The Supreme Court *en banc* has also found that the condition established in § 30(2) of the WA requiring that persons living in Estonia and having no permanent residence outside Estonia submit a weapons permit granted by a competent authority of a state of permanent residence is unconstitutional. The Supreme Court did not analyse in the judgment whether the restriction is unconstitutional in regard to all persons staying in Estonia on the basis of temporary residence permits. That is why, the Supreme Court *en banc* shall, additionally, declare § 30(2) of the WA invalid only to the extent that it establishes a condition that an alien staying in Estonia on the basis of a temporary residence permit and having no permanent residence in a foreign state can possess a weapon on the condition that the alien holds a weapons permit for such type of weapon granted by a competent authority of the alien's state of permanent residence.

33. The Supreme Court *en banc* has found that § 30(2) of the WA is unconstitutional because it disproportionately restricts the fundamental right to free self-realisation. Within the framework of this judgment, on the basis of the circumstances of the administrative matter, the Supreme Court *en banc* could only regard hunting as falling under the right of free self-realisation. That is why § 30(2) of the WA shall be declared invalid only to the extent that it affects the possession of a hunting gun for hunting.

34. Pursuant to § 35(7) of the WA the requirements provided in clauses (2)3) and 5) of the section do not apply to persons referred to in § 30(2) of the WA. Proceeding from § 35(2)3) of the WA, in order to obtain a weapons permit, a person must submit a conclusion prepared on the basis of the results of a medical examination. Pursuant to § 35(5) of the WA, in order to obtain a weapons permit, a person must pass an examination on his or her knowledge of the requirements of legislation regulating the acquisition, registration, storage, carrying, transfer and legal use of weapons and an examination on the provision of first aid to a victim with a shooting injury. If an application is made for a weapons permit for firearms, the applicant shall, as part of the examination, pass a test on his or her knowledge of firearms and a practical test on handling firearms.

35. After the declaration of partial invalidity of § 30(2), an alien who does not hold a weapons permit granted by a state of his or her permanent residence, will acquire the right of possessing a weapon in Estonia under a simplified procedure pursuant to that part of § 30(2) of the WA which will remain in force. Under § 35(7) of the WA such persons would acquire a weapons permit and thus the right to possess a weapon in Estonia without having to pass the examination referred to in § 35(5) of the WA and without their state of health being medically examined.

Such a situation would create a possibility of unequal treatment of those persons who can acquire a weapons permit only pursuant to general procedure, i.e. when fulfilling the referred conditions. Also, this would undermine the legitimate aim of restrictions on the possession of weapons, analysed above. To avoid this the Supreme Court *en banc* considers it necessary to postpone the entering into force of the judgment in this constitutional review matter on the basis of § 58(3) of the CRCPA. The postponement of the entering into force of the judgment will give the legislator a possibility to appropriately regulate the contested issue before the entering into force of the judgment of the Supreme Court *en banc*.

36. The Legal Affairs Committee of the Riigikogu has, in its written reply, requested that the Supreme Court postpone the entering into force of its judgment for six months. In the reply the Legal Affairs Committee has admitted the unconstitutionality of § 30(2) of the WA, and consequently the legislator had the possibility to start resolving the issue already when it drafted the written reply. That is why the Supreme Court *en banc* shall postpone the entering into force of this judgment to the extent that it concerns the declaration of invalidity of § 30(2) of the WA for four months.

V.

37. In his action filed with the administrative court N. Irhin has requested that the acts of the Tallinn Police Prefecture - refusal to hear the application for a weapons permit and refusal to issue a weapons permit - unlawful. As the Supreme Court *en banc* shall declare § 30(2) of the WA, which served as a legal ground for refusal to hear the application for a weapons permit, partly invalid, the refusal of the Tallinn Police Prefecture to hear the application of N. Irhin for a weapons permit, based on the referred provision, shall be declared unlawful.

The request to declare the refusal to issue a weapons permit unlawful shall be dismissed. This is because the police prefecture did not refuse to issue a weapons permit, instead it refused to hear the application for a weapons permit.

38. In his action filed with the administrative court N. Irhin has also requested that the court require that the police prefecture grant him a weapons permit. It appears from §§ 35 and 36 of the valid WA that the grant of a weapons permit is a discretionary decision.

As a rule, an administrative court can not require that an administrative agency make a discretionary decision specified by the court. This would be possible only if the circumstances of a matter manifestly indicate which decision would be lawful. N. Irhin's application has not been heard on the merits, that is why those circumstances which would prevent the grant of a weapons permit to him under the valid Weapons Act have not been verified. That is why the Supreme Court *en banc* can not require that the police prefecture grant a weapons permit to N. Irhin.

39. The fact that the Supreme Court *en banc* can not require that the executive grant N. Irhin a weapons permit does not mean that N. Irhin's action requesting that the court require granting of a weapons permit shall not be satisfied. The Supreme Court *en banc* can not, due to the discretionary nature of granting weapons permits, require the executive to issue weapons permits, yet it can require the executive to hear an application for the acquisition of a weapons permit. This does not amount to exceeding the scope of request included in the action for the purposes of § 19(7) of the Code of Administrative Court Procedure, instead this amounts to satisfaction of an action to the extent possible.

40. As the Supreme Court *en banc* shall declare § 30(2) of the WA partly invalid, the ground for refusal to hear N. Irhin's application for a weapons permit shall cease to exist. The application of N. Irhin is to be heard after clauses 1 and 2 of the decision of this judgment have entered into force, taking into account the regulatory framework concerning the grant of weapons permits to persons staying in Estonia on the basis of temporary residence permits, having no permanent residence outside Estonia.

41. In his appeal in cassation N. Irhin has requested that the legal costs be ordered to be paid by the defendant. It appears from the materials of the case that upon filing the action with the administrative court N. Irhin has paid a state fee of 10 kroons. There are no other expense receipts, including legal aid receipts, among the materials of the case. Although N. Irhin's appeal shall not be satisfied fully, the Tallinn Police Prefecture shall be ordered to pay the state fee of 10 kroons for the benefit of N. Irhin, taking into account the amount of the sum and the weight of the part of the appeal dismissed. The security paid upon filing the appeal in cassation shall be returned.

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