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## Constitutional judgment 3-4-1-10-02

### JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

**No. of the case** 3-4-1-10-02

**Date of judgment** 24 December 2002

**Composition chamber** of Chairman Uno Lõhmus, members Lea Kivi, Ants Kull, Villu Kõve and Jüri Pöld

**Court case** Petition of the Tallinn Administrative Court to review the constitutionality of the last sentence of § 8(3<sup>1</sup>) of the Wages Act and of the Minister of Finance Regulation no. 24 of 28 January 2002 "The procedure for and conditions of disclosure of information concerning the wages of officials".

**Date of hearing** 5 November 2002

**Persons participating hearing** at Representative of complainants sworn advocate Sanjay Jaanus Mody; representatives of the Ministry of Finance, chief specialists Anne Haller and Kaire Uusen; representative of the Chancellor of Justice, adviser Madis Ernits; representative of the Minister of Justice, adviser Virgo Saaremets

#### Decision

**1. To declare the last sentence of § 8(3<sup>1</sup>) of the Wages Act : "The procedure for and conditions of disclosure of information concerning the wages of the officials specified in § 4 of the Anti-corruption Act shall be established by the Minister of Finance", invalid.**

**2. To declare § 8(3<sup>1</sup>) of the Wages Act invalid to the extent that it provides for the disclosure of information concerning the wages of members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and of members of management boards.**

**3. To declare § 8(3<sup>2</sup>) of the Wages Act invalid to the extent that it provides for the disclosure of remuneration paid to members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and of members of management boards.**

**4. To declare § 14(7) of the Anti-corruption Act invalid to the extent that it provides for the submission of declarations of economic interests by members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and of members of management boards.**

**5. To declare the Minister of Finance Regulation no. 24 of 28 January 2002 "The procedure for and conditions of disclosure of information concerning the wages of officials", invalid.**

## **FACTS AND COURSE OF PROCEEDINGS**

**1.** In 1995 the Estonian state sold 66% of the AS Estonian Air shares. The Estonian state retained 34%, the AS BaltiCresco Investeerimisgrupp 17% and the Maersk Air 49% of shares.

**2.** Pursuant to the Minister of Finance Regulation no. 24 of 28 January 2002 "The procedure for and conditions of disclosure of information concerning the wages of officials" the Minister of Transport and Communications demanded in his letter of 27 February 2002 that information concerning the wages of members of management board and supervisory board of the AS Estonian Air be submitted for the disclosure thereof.

On 28 March 2002, referring to § 4(2)(22) of Anti-corruption Act (hereinafter "the AcA"), the Minister of Transport and Communications requested that the chairmen of supervisory and management boards of the AS Estonian Air ensure submission of declarations of economic interests by the members of supervisory and management boards to the depositary of declarations of the Ministry of Transport and Communications in a timely manner.

**3.** The members of supervisory and management boards of the AS Estonian Air did not consent to the demand of the Minister, and members of supervisory board Troels Dilling, Uffe Ellemann-Jensen, Olev Schults, Flemming Edvard Ipsen, Tõnu Laak, Gert Martin Kristensen (former member), Ole Dietz (former member), Andres Rätsepp (former member) and members of management board Michael Ulrich Olsen, Erki Urva and Jorn Lyderstand Eriksen filed an action with the Tallinn Administrative Court.

In the action they requested that the last sentence of § 8(3<sup>1</sup>) of Wages Act, the Minister of Finance Regulation no. 24 of 28 January 2002, and §§ 4(2)(22) and 14(7) of the AcA be not applied and be declared unconstitutional. Also, they requested that the acts of the Minister of Transport and Communications - the demand that the members of supervisory and management boards of the AS Estonian Air submit information concerning their wages and declarations of economic interests - be declared unlawful and prohibited.

**4.** By its judgment of 2 July 2002 the Tallinn Administrative Court partly satisfied the actions. The court declared unlawful the act of the Minister of Transport and Communications, which consisted in demanding the submission of information concerning wages of officials of the AS Estonian Air for the disclosure thereof, and prohibited the performance of this act by the Minister. The last sentence of § 8(31) of the Wages Act and the Minister of Finance Regulation no. 24 of 28 January 2002 were declared unconstitutional and not applied.

By its judgment the administrative court did not satisfy the requests of the complainants relating to demand

of the submission of declarations of economic interests by members of managing bodies of companies, in which the state has a holding, and did not declare §§ 4(2)22) and 14(7) of the AcA unconstitutional.

## **JUSTIFICATIONS OF THE COURT AND PARTICIPANTS**

**5.** The Tallinn Administrative Court pointed out that pursuant to § 26 of the Constitution everyone has the right to the inviolability of family life. This right may be restricted only in the cases and pursuant to procedure established by law. § 8(31) of the Wages Act delegates the establishment of the procedure for disclosure of information concerning wages to the Minister of Finance. Thus, the Minister of Finance has been given the right to determine what is to be deemed a disclosure of information concerning wages and the procedure thereof. Pertinent provision delegating authority is too broad in scope, as it gives the Minister the right to establish restrictions on rights by legislation ranking lower than Acts, which is unconstitutional, and that is why it is in conflict with the provisions of §§ 11 and 26 of the Constitution. The court found in the same judgment that §§ 4(2)22) and 14(7) of the AcA were not in conflict with the Constitution, as the restriction of a fundamental right is established by an Act and is proportional.

**6.** The representative of the complainants, sworn advocate Sanjay Jaanus Mody is of the opinion that the state has, without a legal ground, restricted the fundamental right of complainants to the inviolability of family and private life, by demanding the disclosure of information concerning wages and submission of declarations of economic interests. Information concerning a person's wages and his or her economic interests express his or her economic and social characteristics, relations and status and these form a part of family life, the inviolability of which is protected by § 26 of the Constitution, which allows to intervene in these only in the cases and pursuant to procedure provided by law. Hence, the possibility to establish restrictions on fundamental rights and freedoms by legislation ranking lower than Acts is excluded.

The content of § 8(3)<sup>1</sup> of the Wages Act constitutes intervention in a person's family and private life, whereas pertinent procedure is not established on the level of the Act, instead the right and duty to establish such procedure is delegated to a representative of the executive - the Minister of Finance. The Minister is given the right to determine what is to be deemed a disclosure of information concerning wages and the procedure thereof. Disclosure means that the information is made accessible to the public. Thus, the right and duty to determine in which form and where the information concerning wages is made accessible to the public, has also been delegated to the Minister of Finance.

**7.** The complainants continue to request that §§ 4(2)22) and 14(7) of the AcA be declared unconstitutional. They are of the opinion that it is important for the purposes of economy of proceedings that the Supreme Court analyse all legal norms necessary for the resolution of the problem together. The Tallinn Administrative Court has insufficiently determined the legal rights protected by the Anti-corruption Act and thus, in fact, it has failed to assess the proportionality of the restrictions. If the legal rights protected are economic interests of the state, referred to in the judgment, the fundamental right of representatives of private shareholders of a private company, in which the state has a holding, has been restricted with the objective of protecting a legal right which these persons can not violate with their decisions and actions. § 4(2)22) of the Anti-corruption Act enlarges the circle of persons whose rights are restricted by law without a basis and disproportionately as to the stated objective. These restrictions are neither appropriate nor necessary to the extent that they establish that the subjects of the referred Act are all members of managing bodies of companies in which the state has any holding, and it is not considered necessary to analyse in detail the conformity thereof to the principle of proportionality in the narrower sense. The contested provisions of the Act are also considered to be in conflict with the principle of legal certainty and violate the principles of ownership protection.

**8.** The Social Affairs Committee of the Riigikogu argues that it is not compatible with the requirement of inviolability of private life, established by the Constitution, that the legislator authorises the Minister of Finance to establish the conditions of and procedure for the disclosure of information concerning wages.

**9.** It appears from the opinion of the Minister of Transport and Communications that § 8(31) of Wages Act is

in conflict with the Constitution, as the Constitution excludes the possibility of restricting fundamental rights by legislation ranking lower than Acts.

**10.** The Minister of Justice partially agrees with the conclusions of the Tallinn Administrative Court. The legislator is entitled to authorise the executive to establish procedures which technically specify the general procedure provided by an Act. At the same time the Minister admits that § 8(3<sup>1</sup>) of Wages Act does not meet this criterion, as it determines the scope of authority given to the executive too broadly. The Minister of Justice is of the opinion that the words "and conditions of" of § 9 of the Regulation of the Minister of Finance and of the last sentence of § 8(3<sup>1</sup>) of Wages Act, are unconstitutional.

**11.** The Minister of Finance, consenting to the judgment of the Tallinn Administrative Court, pointed out that the provision of the Wages Act delegating authority, as well as the Regulation of the Minister issued on the basis thereof may infringe the fundamental rights and freedoms of persons. Under § 26 of the Constitution such restrictions must be established by an Act. The Minister is of the opinion that the contested Regulation was issued on the basis of the provision delegating authority. Should the Supreme Court find that the provision of the Wages Act, delegating authority, is unconstitutional, the Regulation issued on the basis of the provision delegating authority is to be declared unconstitutional, too.

**12.** On the basis of § 6(1)1) and § 49(1) of the Constitutional Review Court Procedure Act (hereinafter "the CRCPA") the Chancellor of Justice requested that in addition to § 5(4) and § 8 of the Regulation of the Minister of Finance of 28 January 2002, also §§ 4(2)22) and 14(7) of the AcA should be declared unconstitutional and partially invalid.

The Chancellor of Justice is of the opinion that these legal instruments are in conflict with the Constitution to the extent that they require that members of supervisory and management boards of companies, in which the state has a minority holding, who are not remunerated by the state or by any other person in public law, submit declarations of economic interests. The provisions are in conflict with the Constitution because they infringe the fundamental rights established in §§ 26 and 19(1) of the Constitution, the inviolability of family and private life and everyone's right to self-realisation, and the infringement is not constitutionally justified.

**13.** At the session of the Constitutional Review Chamber the Chancellor of Justice and the representative of the complainants S. J. Mody requested additionally that the Chamber review the constitutionality of §§ 4(2)22) and 14(7) of the AcA. Participants in the proceeding argued that the other participants, who had not submitted opinions on the admissibility of the additional request and on the constitutionality of the disputed provisions of the Anti-corruption Act, should be given an opportunity to do so.

**14.** In his additional explanations the Minister of Justice did not agree with the Chancellor of Justice's interpretation of § 6(1)1) of the CRCPA, and argued that the request of the Chancellor of Justice can not be regarded as a request for the purposes of this provision. The right of the Chancellor of Justice arising from § 6(1)1) of the Constitutional Review Court Procedure Act is related to preliminary proceeding, provided for in § 142 of the Constitution and §§ 17 and 18 of the Chancellor of Justice Act.

The Minister of Justice agreed with the view of the Chancellor of Justice that §§ 4(2)22) and 14(7) of the AcA are pertinent, but found that the provisions are constitutional. The state has established certain public law agencies to perform certain public law functions, or has transferred the performance of administrative functions to subjects of private law. Thus, the main interest of the state in participating in companies is not to earn income but to protect public interests. The state is also interested in the possibility to control the activities of members of management and supervisory boards of companies and to ascertain their economic interests. The Minister of Justice does not consider it necessary to differentiate companies, in which the state has a majority holding, from those in which it has a minority holding, as he is of the opinion that it is possible in case of both companies that the members of the management or supervisory boards receive income derived from corrupt practices. That is why the Minister of Justice is of the opinion that the contested provisions of the Anti-corruption Act are appropriate, necessary and moderate and restrict everyone's right to the inviolability of family and private life, established in § 26 of the Constitution, on the

basis of a legitimate objective referred to in the same provision.

**15.** The Riigikogu Constitutional Committee was of the opinion that § 6(1)1) of the CRCPA did not give the Chancellor of Justice the right to submit a request referred to in § 142 of the Constitution without first addressing the Riigikogu. Request referred to in § 49 of the Constitutional Review Court Procedure Act is essentially an ordinary request within a court proceeding.

The Constitutional Committee of the Riigikogu is of the opinion that the analysis of the Wages Act and that of the Anti-corruption Act should be separated, as the collection of information and disclosure are not interconnected. Also, the purposes for which these activities are permitted are different, as well as the extent of infringement of rights. Submission of declarations of economic interests at least by the members of supervisory and management boards, representing the interests of the state, is justified, irrespective of whether the state has a majority or minority holding in the company. The necessity of the obligation that members of all other companies declare their economic interests requires a more in-depth analysis and debate in the Riigikogu. That is why the Riigikogu Constitutional Committee asks the Supreme Court not to declare the provisions concerning submission of declarations of economic interests of the Anti-corruption Act unconstitutional and invalid.

## **PERTINENT LEGISLATION**

**16.1** The Wages Act (passed on 26 January 1994, RT I 1994, 11, 154, entered into force on 1 March 1994, last amendment on 19 June 2002 - RT I 2002, 62, 377, entered into force on 1 October 2002) establishes the following:

### **§ 8. Reporting information concerning wages of employee**

[...]

(3) An employer does not have the right to report information concerning the wages calculated, paid or payable to an employee or information concerning the employee's wage conditions without the consent of the employee or basis arising from the law.

(3<sup>1</sup>) The prohibition set out in subsection (3) of this section does not apply to the wages of officials specified in § 4 of the Anti-corruption Act (RT I 1999, 16, 276; 87, 791; 2000, 25, 145), in cases where information is required by a court, the Prosecutor's Office, a pre-trial investigation authority, the Tax Board, the Statistical Office, the Labour Inspectorate or the State Audit Office, or in cases prescribed by law. The procedure for and conditions of disclosure of information concerning the wages of the officials specified in § 4 of this Act shall be established by the Minister of Finance.

(3<sup>2</sup>) The provisions of subsection (3<sup>1</sup>) of this section also apply with regard to remuneration paid to members of the management boards or supervisory boards of companies in which the state, a local government or a legal person in public law has a holding or to members of bodies which decide on the transfer of state or municipal assets or the assets of other legal persons in public law.

[...]

[RT I 2001, 50, 287 - entered into force 11.06.2001]

**16.2.** On the basis of the last sentence of § 8(3<sup>1</sup>) of the Wages Act the Minister of Finance has, on 28 January 2002, issued Regulation no. 24 "The procedure for and conditions of disclosure of information concerning the wages of officials" (RTL 2002, 22, 283).

### **§ 5. Procedure for disclosure of information concerning wages**

[...]

(4) A company shall, in standard form presented in Annex 2 to this Regulation, submit to the ministry, in the case the state has no holding in it - to a local government, in the case the state or the local government have no holding in it - to a legal person in public law who administers the shares or a part of the company, the information concerning wages of the following persons for the disclosure:

1) members of management and supervisory board of companies, in which the state has a holding;

[...]

#### §. 7 Manner of disclosure of information concerning wages

(1) In the cases established in § 5 of this Regulation the information concerning wages is disclosed on a webpage of an agency, institution, legal person in public law, foundation or non-profit organisation, where these are available during one year since the disclosure. If there is no webpage the agency, institution, legal person in public law, foundation or non-profit organisation shall disclose the information concerning wages in the official publication "Ametlikud Teadaanded".

(2) Within one year since the disclosure of information concerning wages an agency, institution, legal person in public law, foundation or non-profit organisation is required to give the information concerning wages, disclosed on a webpage in accordance with the conditions established by this Regulation, to any interested person who files a pertinent written request for information, within 20 days as of the receipt of pertinent request.

#### §. 8 Disclosure of information concerning other wages

Information concerning other wages and remuneration of officials who are members of local government councils, administrative councils, management boards, supervisory boards and bodies, which is not disclosed pursuant to § 5 of this Regulation, shall be given by the employer who pays these, on the conditions established in § 4(2) of the Regulation and on the form presented in Appendices 1 or 3 thereto, within one year as of the disclosure of information concerning wages, to any interested person who files a pertinent written request for information, within 20 days as of the receipt of pertinent request.

**16. 3.** § 8(3<sup>1</sup>) of the Wages Act refers to the Anti-corruption Act (passed on 27 January 1999 RT I 1999, 16, 276, entered into force on 28 February 1999, last amendment on 19 June 2002 - RT I 2002, 63, 387, entered into force on 1 September 2002)

#### § 4. Official

(1) Pursuant to this Act, an official is a state or local government official who has an official position provided for in § 3(2), or a non-staff public servant performing his or her duties.

(2) For the purposes of this Act, the following are also deemed to be officials:

[...]

22) members of the management boards and supervisory boards of companies with state participation;  
[...]

(RT I 2001, 58, 357 - entered into force 03.07.2001)

#### § 14. Submission of declaration

[...]

(7) Members of the management board or supervisory board of a company with state participation shall

submit declarations to the Minister who directs the ministry which exercises the state shareholder rights in the company, unless otherwise provided by law. (RT I 2001, 58, 357 - entered into force 03.07.2001)

[...]

## **OPINION OF CONSTITUTIONAL REVIEW CHAMBER**

### **I.**

**17.** The complainants contested in the Tallinn Administrative Court the constitutionality of § 8(3<sup>1</sup>) of Wages Act, the Minister of Finance Regulation no. 24, and §§ 4(2)22) and 14(7) of the AcA. The Tallinn Administrative Court declared unconstitutional and did not apply the last sentence of § 8(31) of Wages Act and the Minister of Finance Regulation no. 24 of 28 January 2002. The administrative court, by its judgment, did not satisfy the request of the complainants to declare unlawful and prohibit the act of the Minister of Transport and Communications, which consisted in the demand that members of supervisory and management boards of the AS Estonian Air submit declarations of economic interests. The administrative court considered §§ 4(2)22) and 14(7) of the AcA constitutional.

**18.** In the Supreme Court the complainants and the Chancellor of Justice contested the constitutionality of the above provisions. In his written opinion the Chancellor of Justice himself, and at the court session his representative, requested that the Supreme Court analyse the constitutionality of §§ 4(2)22) and 14(7) of the AcA and declare the provisions invalid. The Chancellor of Justice based his request on §§ 49 and 6(1)1) of the CRCPA. The Chancellor of Justice argued that as the Act does not refer to § 142 of the Constitution, he does not have to first address the body that passed the Act and he may, during proceedings, submit requests to the Supreme Court to assess the constitutionality of other pertinent legislation.

**19.** The Constitutional Review Chamber does not agree with the Chancellor of Justice. The request of the Chancellor of Justice for control of constitutionality of the provisions of the Anti-corruption Act can not be regarded as an independent request by which constitutional review proceedings are initiated and regarding which the Supreme Court must express its opinion in the conclusion of its judgment. Pursuant to § 142 of the Constitution and §§ 17 and 18 of the Chancellor of Justice Act a proceeding in the Supreme Court must be preceded by a preliminary proceeding, which guarantees a possibility to the body that adopted or issued legislation to review it and bring it into conformity with the Constitution. § 6 of the Constitutional Review Court Procedure Act does not contain an independent ground for submitting requests, instead it only specifies the right to initiate abstract norm control in the Supreme Court, given to the Chancellor of Justice by § 142 of the Constitution. § 49 of the Constitutional Review Court Procedure Act regulates the submission of procedural requests upon hearing matters in the Supreme Court. Nevertheless, the Supreme Court can consider the reasoning of the Chancellor of Justice if it finds that §§ 4(2)22) and 14(7) of the AcA are pertinent norms.

**20.** The Supreme Court is not bound by the reasoning of court judgments upon adjudicating constitutional review matters. On the basis of § 14 of Constitutional Review Court Procedure Act the Supreme Court may, upon adjudicating a matter on the basis of a court judgment, declare invalid or unconstitutional pertinent legislation or a provision thereof.

The Tallinn Administrative Court requests that the Supreme Court assess the constitutionality of § 8(31) of the Wages Act and the Minister of Finance Regulation no. 24. This could be expected, considering the judgment in the administrative case. The complainants and the Chancellor of Justice are of the opinion that §§ 4(2)22) and 14(7) of the AcA are pertinent, too. The administrative court did not doubt the relevance of these provisions when resolving the complaint. The court only did not agree with the complainants' allegation that the contested provisions were unconstitutional.

**21.** The judgment of the Tallinn Administrative Court relates to two acts. Firstly, what was contested was the disclosure of information concerning wages, pursuant to § 8(3<sup>1</sup>) of Wages Act, of persons referred to in §

4(2)22) of the AcA. The submission of information is specified by the Minister of Finance Regulation no. 24, which determines the procedure for and conditions of disclosure of information concerning wages. Secondly, the obligation to submit declarations of economic interests on the basis of § 14(7) of the AcA has been contested.

The circle of persons required to disclose the information concerning their wages or submit declarations of economic interests is determined in § 4 of the AcA. § 4(2)22) includes among these persons also all members of management and supervisory boards of companies, in which the state has a holding. The Wages Act and the Regulation of the Minister of Finance can be implemented primarily because these persons are among those enumerated in the Anti-corruption Act. § 8(3<sup>1</sup>) of the Wages Act regulates the disclosure of information concerning wages. In § 8(3<sup>2</sup>) of the same Act the legislator has extended the scope of application of § 8(3<sup>1</sup>) to remuneration paid to members of management and supervisory boards of companies, in which the state has a holding.

**22.** The Chamber is of the opinion that within the constitutional review proceeding it has to control the constitutionality of §§ 8(31) and 8(32) of Wages Act and regulation 24 of the Minister of Finance, as well as the constitutionality of §§ 4(2)22) and 14(7) of Anti-corruption Act.

The analysis of the Wages Act, the Regulation of the Minister of Finance and the Anti-corruption Act shall answer the question of constitutionality of disclosure of information concerning wages. The obligation to submit declarations of economic interests arises from the Anti-corruption Act. The Chamber is of the opinion that the referred provisions are integrally inter-related and pertinent to the adjudication of the matter.

## II.

**23.** The inviolability of family and private life is protected by § 26 of the Constitution. This universal right may be restricted only in the cases and pursuant to procedure provided by law. The right to respect for private and family life is also provided by Article 8 of the European Convention for the Protection of Fundamental Rights and Freedoms. When analysing the scope of protection of private life the European Court of Human Rights has expressed the opinion that private life included, inter alia, person's activities of a professional or business nature (see the ECHR judgment of 16 December 1992 Niemitz v Germany) and the collection and storage of information concerning a person by the authorities (see the ECHR judgment of 4 May 2000 Rotaru v Romania).

Taking into account the interpretation practice of the Convention on Human Rights the Chamber is of the opinion that the scope of protection of § 26 of the Constitution also includes collection, storage and disclosure of such information relating to business and professional activities, which enable to obtain an overview of a person's property and economic interests. Thus, the collection and making available to the public of information concerning a person's wages, and obligation to disclose his or her property and proprietary obligations to state agencies infringes upon the right to inviolability of family life, protected by § 26 of the Constitution.

**24.** The Supreme Court has repeatedly stressed that the first sentence of § 3(1) and the first sentence of § 11 of the Constitution allow for the restriction of fundamental rights and freedoms only in the cases and pursuant to procedure established by Acts adopted by the Riigikogu or by referenda (see Constitutional Review Chamber judgment of 12 January 1994, case III-4/A-2/94, RT I 1994, 8, 130). The legislator must decide all issues important from the point of view of fundamental rights itself, and must not authorise the executive to rule on these. The executive may but specify the restrictions imposed on fundamental rights and freedoms, and is not allowed to establish restrictions in addition to those provided by law (see Constitutional Review Chamber judgments of 17 March 1999, case 3-4-1-1-99 - RT III 1999, 9, 89, paragraph 14, and of 8 February 2001, case 3-4-1-1-01 - RT III 2001, 5, 49, paragraph 14).

**25.** The last sentence of § 8(3<sup>1</sup>) of the Wages Act authorises the Minister of Finance to impose the procedure



for and conditions of disclosure of information concerning the wages of the officials specified in § 4 of the AcA. The Chamber points out that the title of § 8 and subsection (3) of the same section of the Wages Act speak of reporting of information concerning wages. The legislator has used the terms "reporting" and "disclosure", leaving it the duty of the executive to define these concepts.

The last sentence of § 8(3<sup>1</sup>) of the Wages Act gives the Minister of Finance too extensive authority. If the procedure for the disclosure of information concerning wages means technical specification of the general procedure established by the Act, then imposing conditions of disclosure enables the executive to establish new rules, not provided by the Act, which restrict persons' fundamental rights. This is what has happened. The legal definition of information concerning wages given in § 2 of the Regulation is broader than the definition of § 2 of Wages Act, as it includes information concerning remuneration on the basis of contracts of service and other contracts. § 9 contains a rule, pursuant to which additional remuneration for processing state secret and classified mediums shall not be disclosed, whereas such an exemption is not based on any valid Act. § 11 of the Regulation provides that in addition to bodies enumerated in § 8(3<sup>1</sup>) of the Wages Act also the Ministry of Finance has the right to obtain information concerning wages for the analysis of wages and maintenance of wages' statistics.

**26.** On the basis of the aforesaid it can be concluded that the provision of § 8(3<sup>1</sup>) of the Wages Act delegating authority is unconstitutional because of its scope and thus, the Regulation of the Minister of Finance issued on the basis thereof is unconstitutional, too.

### **III.**

**27.** The Chamber considers it necessary to analyse also the substantial constitutionality of the obligation to disclose information concerning wages, contained in § 8(3<sup>1</sup>) and § 8(3<sup>2</sup>) of the Wages Act.

First, the Chamber points out that it shall analyse the constitutionality of these provisions on the basis of the concrete case. The Chamber shall confine the evaluation of the disclosure of information concerning wages to the persons who are members of supervisory bodies of companies, in which the state has a precluding interest, but who are not representatives of the state, and to members of management boards.

**28.** Disclosure of information concerning wages infringes everyone's right to the inviolability of private life, established by § 26 of the Constitution. This amounts to the state's obligation not to interfere with private life of persons (see Constitutional Review Chamber judgment of 5 March 2001, case 3-4-1-2-01 - RT III 2001, 7, 75). The state may interfere with a private life of a person only pursuant to procedure and conditions provided by law to protect health, morals, public order, or the rights and freedoms of others, to prevent a criminal offence, or to apprehend a criminal offender.

**29.** As a rule, the information concerning wages of employees of private sector is not reported on the basis of § 8(3) of Wages Act. § 8(3<sup>1</sup>) of the same Act provides an exemption in regard to persons enumerated in § 4 of the Anti-corruption Act - disclosure of information concerning the wages of these persons is obligatory. § 8(32) of the Wages Act extends the scope of application of the Anti-corruption Act to remuneration to members of management and supervisory boards of companies, in which the state has a holding.

**30.** First of all the Chamber has to find out why the legislator considered the disclosure of information concerning the wages of managing bodies of companies, in which the state has a precluding interest, necessary.

It appears from the explanatory letter to the draft of the Wages Act Amendment Act (671 SE), initiated on 5 February 2001, and from the Riigikogu shorthand notes that the objective of the disclosure of information concerning wages and remuneration was to make the use of state assets more transparent and to avoid corruption. The Chamber is of the opinion that the restriction aimed at the protection of public order and prevention of criminal offences is a legitimate one.

**31.** Next, the Chamber has to answer the question of whether the disclosure of information concerning

wages and remuneration is necessary for the achievement of the desired aim. There are two legal rights to be balanced - the interests of the state to protect public order on the one hand; and on the other hand the right of a member of a supervisory board of a company, in which the state has a precluding interest, who is not a representative of the state, to the inviolability of family life.

**32.** The Chamber is of the opinion that disclosure of information concerning wages is an intense interference with the private life of persons. In addition to disclosure of information concerning wages the state has other ways for monitoring the economic activities of companies, in which the state has a holding, and for getting to know the amount of remuneration paid to members of managing bodies of companies.

All rights of a shareholder, based on the Commercial Code (hereinafter "the CC"), extend to the state as a shareholder of a company. Pursuant to § 326 of the CC remuneration of a member of supervisory board shall be determined by a resolution of the general meeting, which every shareholder has the right to participate in. Thus, the state has a possibility to actively participate in the determination of remuneration to members of supervisory boards. Pursuant to § 314 of the CC remuneration of a member of management board shall be determined by a resolution of the supervisory board. In this context the right of the state as a shareholder is confined to the general right of shareholder to information on the basis of § 287 of the CC, pursuant to which a shareholder has the right to receive information on the activities of the public limited company at the general meeting. The possibility of the state to influence decision-making depends on how big is the state's holding in a company and whether the state has its representative in the company.

**33.** The Constitutional Review Chamber is of the opinion that as the remuneration is determined in conformity with the Commercial Code and disclosure can not influence the determination thereof, then the disclosure of information concerning the wages of the disputed group of persons is not necessary. There is no reasonable justification as to why the public has to know the information concerning the wages of these persons. The state as a shareholder of a company has an overview of the information concerning the wages and remuneration of members of managing bodies of companies.

**34.** Consequently, §§ 8(3<sup>1</sup>) and 8(3<sup>2</sup>) of the Wages Act are in conflict with the right to the inviolability of private life, established in § 26 of the Constitution, to the extent that they allow for the disclosure of information concerning the wages and remuneration of persons representing private interests in the companies, in which the state has a precluding interest.

#### **IV.**

**35.** Next, the Constitutional Review Chamber of the Supreme Court shall analyse the constitutionality of §§ 4(2)22) and 14(7) of the Anti-corruption Act.

**36.** § 4(2) of the Anti-corruption Act contains a list of persons who are also officials for the purposes of this Act. The amendments to the Anti-corruption Act of 14 March 2000 (RT I 2000, 25, 146) and 7 June 2001 (RT I 2001, 58, 357) extended the scope of application of the Act and added to the list all members of supervisory and management boards of companies, in which the state has a holding, irrespective of how big the state holding in the company is.

The obligations of persons to submit declarations of economic interests does not arise from § 4(2)22) of the Anti-corruption Act. The submission of such declarations, in regard to different groups of persons, is regulated by § 14 of the Act. The obligation of members of management and supervisory boards of companies, in which the state has a holding, is based on subsection (7) of the latter section.

**37.** According to § 8 of the Anti-corruption Act a declaration of economic interests is a document in which an official declares information concerning his or her property, proprietary obligations and other circumstances which allow to determine the economic interests and financial situation of the official. The obligation to submit such declarations interferes with everyone's right to the inviolability of private life, established in § 26 of the Constitution.

According to the Anti-corruption Act the purpose of a declaration of economic interests is to get an overview of the economic interests of an official, which may promote or cause a conflict of private and public interests, the commitment of an act of corruption or the creation of a relationship involving the risk of corruption. The objective of interfering with private life - to avoid corruption - is legitimate, because § 26 of the Constitution allows to impose restrictions to protect public order and prevent a criminal offence.

**38.** § 14(7) of the Anti-corruption Act regulates the obligation of members of supervisory and management boards of companies, in which the state has a holding, to submit declarations of economic interests irrespective of how big is the state holding in a concrete company or whether the members of the supervisory board represent state or private interests.

The following analysis of the proportionality of the restriction concerns only members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and members of management boards.

**39.** In addition to income related to concrete company it is required to show other proprietary rights and obligations of a person in the declaration of economic interests. Persons are required to declare all their incomes, property and obligations, including for example income received abroad and property in joint ownership. Information concerning a spouse, parents and children is to be declared, too.

**40.** Declaration of economic interests is submitted to the depositary of declarations, who has the obligation to supervise over declarations. For example, pursuant to § 16(2) of the AcA, a depositary has the right to make enquiries as to the accuracy of information in a declaration. Also, a depositary of declarations has the right to forward documents to an investigative body for verification. The rights of a depositary of declarations are extensive, and no specific regulation has been established in relation to members of supervisory boards of companies, in which the state has a precluding interest, who represent private interests, and members of management boards.

**41.** Such intense interference with the private life of persons is not justified in relation to members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and members of management boards. This amounts to interference not only with the private life of the members of supervisory and management boards, but also with the private life of persons closest to them. It has not been shown that submission of declarations and the verification system thereof promotes prevention or detection of corruption. Thus, the imposed restriction is not in conformity with the principle of proportionality.

**42.** For the above reasons the Constitutional Review Chamber of the Supreme Court is of the opinion that § 14(7) of the AcA is in conflict with § 26 of the Constitution in relation to members of supervisory boards of companies, in which the state has a precluding interest, who are not representatives of the state, and members of management boards.

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