Constitutional judgment 3-4-1-4-01

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**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
of 22 February 2001**

Review of the petition of the Tallinn Administrative Court to review the constitutionality of § 231(6) of the Code of Administrative Offences.

The Constitutional Review Chamber,
presided over by Chairman Uno Lõhmus
and composed of the members of the Chamber,
justices Tõnu Anton, Lea Kivi, Ants Kull and Jüri Põld,
at its open session of 8 February 2001,
with the representative of the Riigikogu Vootele Hansen, acting Chancellor of Justice Aare Reenumägi and the Minister of Justice Märt Rask appearing
and in the presence of the secretary to the Chamber Piret Lehemets
reviewed the petition of the Tallinn Administrative Court of 14 November 2000.

I. FACTS AND COURSE OF PROCEEDINGS

1. On 26 April 2000 a parking inspector of the Tallinn Traffic Control Centre prepared a fine-claim concerning automobile Lancia, owned by Taivo Ruus, for a violation of parking arrangements in Tallinn and under § 951(3)2) of the Code of Administrative Offences (hereinafter “the the CAO”) imposed a fine of 460 kroons for the failure to pay a parking fee for parking in a paid parking place. As the fine was not paid voluntarily on time, the Centre prepared a decision on recovery of the fine. On 16 June 2001 the enforcement department of the Lääne-Viru County Court sent T. Ruus an enforcement notice.

2. T. Ruus filed a complaint with the Tallinn Administrative Court, requesting the annulment of the fine-claim and termination of the proceeding of the matter. The complainant found that the fine-claim was not legal because no report was prepared concerning the violation of parking arrangements and the offender had no possibility to participate in the hearing of the matter. T. Ruus argued that such a proceeding violated Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the ECHR”) and § 243 of the the CAO. In addition to these arguments the complainant requested at the court hearing that § 231(6) be not applied and that it be declared unconstitutional.

3. By its judgment of 14 November 2000 the Tallinn Administrative Court annulled the disputed fine-claim and terminated the proceeding of the administrative offence matter. The court declared § 231(6) of the the CAO unconstitutional, did not apply it and submitted a petition to the Supreme Court to review the

constitutionality of the provision.

II. THE LAW

The disputed provision of the Code of Administrative Offences

4. The provision not applied by the Tallinn Administrative Court and disputed by T. Ruus is the following.

§ 231. Cases when administrative offence report is not prepared
.....
(6) A report of administrative offence shall not be prepared concerning a fine imposed under clause 951 (3) 2) of this Code. An official shall prepare a fine-claim concerning a violation of parking arrangements, which shall include the following:
1) the post, first name and surname of the person preparing the fine-claim;
2) name of the agency on behalf of whom the fine-claim is prepared, the address, banc account number and contact telephone thereof;
3) place, date and time of the violation of parking arrangements;
4) type, make and registration number of the vehicle that violated parking arrangements;
5) a short description of the violation of parking arrangements;
6) the amount of fine.

Justifications of the participants

5. According to the petition of the Tallinn Administrative Court § 231(6) of the CAO is in conflict with §§ 11, 12 and 14 of the Constitution and with the principle of legal clarity for the following reasons:

1) § 23 (6) of the CAO enables an official to ignore the procedural provisions established for procedure for administrative offence matters and restricts the rights of those who violate parking requirements, discriminating against these persons as compared to other offenders solely on the basis of the peculiarity of the offence. Such restriction is neither necessary nor justified in a democratic society. This violates the requirement of equal treatment of administrative offenders, and consequently, the constitutional principle of equality.

2) The fact that a fine-claim is prepared and financial punishment is imposed immediately does not allow to observe § 218(1) of the CAO and thus a person may be punished even if there are circumstances excluding the proceeding in the matter of administrative offence. § 231(6) of the CAO does not guarantee the realisation of rights and freedoms of administrative offenders and is thus in conflict with § 14 of the Constitution.

3) The wording of the first sentence of § 231(6) of the CAO is incomprehensible. It proceeds from § 227 and from the spirit of other provisions of the CAO that a report shall be prepared concerning an administrative offence, yet § 231(6) prescribes that a report of administrative offence shall not be prepared concerning a fine imposed under clause 951(3)2). Here the imposed fine is of primary importance and not the commission of an administrative offence under § 951. Thus, by an incomprehensible wording the principle of legal clarity has been violated.

6. At the court session the representative of the Riigikogu stated the opinion of the Legal Affairs Committee of the Riigikogu that § 231(6) of the CAO was not unconstitutional.

7. The Chancellor of Justice agrees with the conclusions of the Administrative Court and argues that the wording of § 231(6) of the CAO is incorrect, because it attributes to a vehicle a human activity - a violation of parking arrangements. The fine, not a commission of an administrative offence, has been given primacy and thus the principle of legal clarity has been violated. The disputed provision is in conflict with §§ 11, 12 and 14 of the Constitution. The Chancellor of Justice argues that a fine-claim is not a decision but a communication of a sanction in a way which does not ensure that a fined person will learn about his or her

punishment. § 231(6) of the CAO has created circumstances which do not guarantee a person's right to remedy and this violates the principle of proportionality inherent to § 11 of the Constitution. The legislative power has not fulfilled the obligation, established by § 14 of the Constitution, to protect rights and freedoms.

8. The Minister of Justice argues that § 231(6) is in conflict with § 13(1) of the Constitution in conjunction with the provisions of § 13(2), as the guarantee of rights and freedoms of individuals is the duty of not only of the judicial power but also of the legislative and executive powers. The Minister concurs with the administrative court in that establishing extensive differences, as compared to general procedure, for proceedings in matters concerning violations of parking arrangements is not justified. At the same time the Minister is of the opinion that the disputed provision is not in conflict with § 12 of the Constitution, because the regulatory framework of the Act does not proceed from the characteristics of an individual.

Opinion of the Constitutional Review Chamber

9. In his complaint to the Tallinn Administrative Court Taivo Ruus argues that upon imposition of a punishment for an administrative offence the person who is held liable must have a possibility to defend himself and to give explanations. But when a fine-claim is prepared for a violation of parking arrangements the administrative offender is given no possibility to participate in the proceeding in the matter. He points out that it is clear from the provisions of § 231(6) of the CAO that a fine-claim is not a decision but a document replacing a report of an administrative offence. The complainant argues that by preparing a fine-claim and by subjecting it to execution the right to a fair and public hearing prescribed by Article 6 of the ECHR has been violated.

10. The administrative court viewed a fine-claim as a decision to impose a punishment for an administrative offence. The court did not consider § 231(6) of the CAO to be in conflict with Article 6 of the ECHR on the ground that the Article regulates the right to a hearing of those who are accused of a crime. This Article is not applicable to a proceeding before an administrative body. The court concurred with the complainant in that § 231(6) of the CAO enables an official, upon proceedings in matters concerning violations of parking arrangements, to ignore §§ 24, 243 and 247 of the CAO which are observed upon proceedings in other matters concerning administrative offences. Thus, § 231(6) is discriminatory and consequently in conflict with § 12 of the Constitution. Also, the disputed provision does not guarantee protection to an administrative offender, which is not in conformity with § 14 of the Constitution. The judgment of the court also refers to the conflict of § 231(6) of the CAO with § 11 of the Constitution but does not clarify the essence of the conflict.

11. Irrespective of the fact that the complainant and the administrative court use different arguments and that the administrative court has not referred to a specific fundamental right which has been infringed, it may be concluded from the judgment of the court that what they mean is the right to a fair trial in the determination of an offence and the right to have an effective remedy.

Firstly, the Constitutional Review Chamber finds it necessary to observe that the scope of protection of procedural rights under §§ 22, 23 and 24 of the Constitution is narrower than that of Article 6 of the ECHR. Although Article 6 of the ECHR gives everyone, in the determination of a criminal charge against him, a right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, the scope of protection of Article 6 is not confined to those acts which are recognised as criminal under domestic law, i.e. also by Estonian law. The case-law has extended the application of Article 6 to some offences which, under Estonian law, are either administrative or disciplinary offences. Such offences can be regarded as crimes in the meaning of the Convention, if it is justified by the nature of the offence and the severity of the imminent punishment (*mutatis mutandis* Engel and others v. the Netherlands, judgment of 8 June 1976, §§ 80-85; Öztürk v. Germany judgment of 21 February 1984, §§ 47-56). The complainant has not justified on what grounds a violation of parking arrangements can be viewed as a crime in the meaning of the Convention. That is why the Constitutional Review Chamber shall not assess the merits of whether a violation of parking arrangements can be viewed as a crime under the ECHR.

At the same time the Chamber points out that in addition to the referred provisions of the Constitution a person's right to a fair and effective trial also proceeds from § 14 of the Constitution.

First of all, the Chamber finds it necessary to assess whether § 231(6) of the CAO is in conformity with § 14 of the Constitution.

12. A proceeding in matters concerning violation of parking arrangements differs from a proceeding in matters concerning other administrative offences. When parking arrangements have been violated a report of administrative offence is not prepared (§ 231(6) of the CAO). An official prepares a fine-claim on the spot, he shall retain one copy of the report and another one is given to the driver who has violated the parking arrangements, or it is attached to the vehicle so that it is easily visible (§ 231(7) of the CAO). Thus, the punishment is not preceded by ordinary procedure in matters concerning administrative offences and the person can not avail himself of the rights established by § 243 of the CAO, *inter alia* the right to be heard before the decision is made. A fine-claim is by nature a decision concerning punishment for an administrative offence, which is made without effecting ordinary proceedings established by the Code of Administrative Offences. § 352 of Traffic Act, valid during the violation under observation, established that the owner of a vehicle shall be held liable for a violation of a parking regulation if it is not possible to determine the driver of the vehicle.

13. In order to determine whether it is right to restrict the right of a person to a fair and effective trial it is necessary to answer the question of whether the restriction meets the principle of proportionality established by § 11 of the Constitution. This requires weighing of different interests. On the one hand, the right of a person to be heard upon preparing a fine-claim and imposing a punishment, and on the other hand the public interest to effectively conduct a large number of proceedings concerning offences of the same category.

The Supreme Court points out that a violation of parking arrangements is a frequent offence, which is usually minor and simple in terms of facts, but creates serious problems in some locations. The nature of the offence renders it difficult to determine the person who violates parking arrangements. As a rule, the agency or official alleging violation has the burden of proof. In matters of violation of parking arrangements the offender is determined by the registration number of a vehicle and if it is not possible to identify the person who parked the vehicle it is presumed that the violation was committed by the person on whose name the vehicle has been registered. The Chamber is of the opinion that such a derogation from the principle of burden of proof is justified by the nature of the offence and the great number of such offences. As a rule, during the proceedings in matters concerning fine-claims persons lack the possibility to submit explanations and objections before the decision to punish is made. Thus, the right of a person to a fair trial is restricted, but this restriction is outweighed by the need to conduct economical and effective proceedings in matters of violations of parking arrangements.

14. The Court considers it necessary to underline that the fact that an official effects a proceeding in an administrative offence matter and punishes the guilty is not, in itself, in conflict with Article 6 of the ECHR. It is important that the punished person must have a possibility to dispute the decision concerning him in a court (*mutatis mutandis* Kadubec v. Slovakia, judgment of 2 September 1998, § 57). The right of appeal against the fine-claim prepared for the violation of parking arrangements was guaranteed, because the complaint of T. Ruus was heard by an administrative court. The administrative court considered this complaint as a complaint against a decision made concerning a matter of administrative offence. The court conducted a proceeding in the matter of the complaint of T. Ruus and he had an opportunity to submit explanations and objections concerning the fine-claim.

15. On these considerations the Constitutional Review Chamber disagrees with the opinion of the Tallinn Administrative Court that § 231(6) of the CAO is in conflict with § 14 of the Constitution. Nevertheless, the Supreme Court considers it necessary to draw attention to the need to improve the procedure for effecting proceedings in matters concerning violations of parking arrangements. It should be guaranteed that persons are informed of their punishments. The legislator should consider the possibility to provide for an extra-

judicial dispute procedure.

16. The Supreme Court finds no violation of § 12(1) of the Constitution. In the present case the regulatory framework of the law does not proceed from the characteristics of an individual but from the peculiarities of administrative offences. The procedure can not be the same for all administrative offences. Violation of parking arrangements is a specific offence, the proceedings in matters concerning such offences are effected under simplified procedure. Bearing in mind the specific character and large number of the offences such simplified procedure is both reasonable and proportional.

17. The administrative court also pointed out in its judgment that the wording of the first sentence of § 231(6) of the CAO is incomprehensible and thus in conflict with the principle of legal clarity. The norm in this sentence stipulates that a report of administrative offence shall not be prepared concerning a fine imposed under § 951 of the CAO. § 951 of the CAO establishes liability for parking a vehicle in an unauthorised location or for parking a vehicle in a public paid parking place if the fee is not paid or if the paid parking time is exceeded.

The Supreme Court admits that this is a drawback of technical character which can be overcome through interpretation. § 231(6) of the Code of Administrative Offences has to be interpreted as a norm on the basis of which it is possible to impose a fine for a violation of parking arrangements without preparing a report.

For the aforesaid reasons § 231(6) is not in conflict with the Constitution and the petition of the Tallinn Administrative Court should not be satisfied.

Proceeding from § 19(1)1) of the Constitutional Review Court Procedure Act the Constitutional Review Chamber of **the Supreme Court has decided:**

To dismiss the petition of the Tallinn Administrative Court of 14 November 2000.

The judgment is effective as of pronouncement, is final and is not subject to further appeal.

U. Lõhmus
Chairman of the Constitutional Review Chamber
