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Home > Constitutional judgment 3-4-1-3-01

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JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER of 22 February 2001

Review of the petition of the Järva County Court to declare the Government of the Republic Regulation no. 161 of 27 May 1993 "Reimbursement of expenses for the use of personal automobiles for business travel" unconstitutional.

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 acting Chancellor of Justice Aare Reenumägi and the representative of the Minister of Justice Enno Loonurm appearing
and in the presence of the secretary to the Chamber Piret Lehemets
reviewed the petition of the Järva County Court of 13 November 2000.

FACTS AND COURSE OF PROCEEDINGS

1. On 23 August 2000 the Järva Tax Board Office issued a precept to private limited company *Folia Apteek* to the effect that compensation paid for the use of personal automobiles is subject to social tax under the Government of the Republic Regulation no. 161 of 27 May 1993 "Reimbursement of expenses for the use of personal automobiles for business travel" (hereinafter "the Regulation of 1993").

2. Private limited company *Folia Apteek* filed a complaint against the precept of the Järva Tax Board Office by way of administrative court procedure. The complainant argued, *inter alia*, that the Tax Board has applied an unconstitutional legislation of the executive. By the judgment of 7 November 2000 the Järva County Court declared the Regulation of 1993 unconstitutional to the extent that it imposes social tax and did not apply it.

3. On 13 November 2000 the Järva County Court submitted a petition to the Supreme Court requesting that the Regulation of 1993 be declared unconstitutional to the extent that it imposes social tax.

THE LAW

Justifications of the participants

4. It is argued in the petition of the Järva County Court that the Regulation of 1993 is not in conformity with § 87(6) of the Constitution, pursuant to which the Government of the Republic shall issue regulations and orders on the basis of and for the implementation of law.

The administrative court reasons as follows.

§ 3 (1) of the Social Tax Act, passed on 15 April 1998 and valid as of 1 January 1999 (hereinafter "the 1998 Social Tax Act") stipulates that social tax is not charged on compensation for the use of a personal automobile for business travel in accordance with the procedure and within the limits established by the Government of the Republic. On the basis of this provision the Government of the Republic had to establish, by its regulation, the maximum rate of compensation to which social tax is not imposed. The Government of the Republic did not issue such a regulation in 1999. Under the Regulation of 1993 social tax was charged on compensation paid for the use of a personal automobile for business travel in 1999, too. This Regulation, to the extent that it imposes social tax, is in conflict with § 87(6) of the Constitution as of 1 January 1999. According to the judgment of the Constitutional Review Chamber of the Supreme Court of 12 May 2000 the referred provision of the Constitution also means that the Government of the Republic shall issue a regulation for the period during which the Act delegating authority to issue the regulation is in force. Even if a new Act contains a delegation norm, analogous to that of an old Act, it is still necessary to issue a new regulation, unless the implementation provisions of the Act expressly provide otherwise. As the Regulation of 1993 was declared invalid by the Government of the Republic regulation no. 78 of 7 March 2000 "Conditions of reimbursement of expenses relating to the use of a personal automobile for service, work or business related travel and the maximum limit thereof" (hereinafter "the Regulation of 2000"), the Regulation of 1993 should not be declared invalid but unconstitutional.

5. The representative of the Government of the Republic is of the opinion that the application of the Regulation of 1993 during the period when the 1998 Social Tax Act was in force violated the principle of legal certainty, although the 1998 Social Tax Act contains a norm delegating authority equal to that of the 1990 Social Tax Act. That is why the Government of the Republic is of the opinion that the Regulation of 1993 which was in force until 1 March 2000 was unconstitutional.

6. The Chancellor of Justice is of the opinion that the petition of the Järva County Court is justified for the reasons set out in the petition.

7. The Minister of Justice, too, is of the opinion that the petition of the Järva County Court is justified for the reasons set out in the petition. In addition, the Minister of Justice, too, refers to the conflict of the Regulation of 1993 with the principle of legal certainty.

Opinion of the chamber

8. The tax dispute on the basis of which this constitutional review case was initiated relates to imposition of social tax on compensation for the use of personal automobiles for business travel in 1999 in accordance with the Regulation of 1993. The Regulation of 1993 was issued when the 1990 Social Tax Act was in force. That Act, including the norm thereof delegating authority, which served as the basis for issuing the referred Regulation, became invalid as of 1 January 1999, when the Social Tax Act passed on 15 April 1998 entered into force. At the time when the social tax was collected on the compensation the 1998 Social Tax Act was in force.

9. § 3(1) of the 1998 Social Tax Act established that social tax is not charged on compensation for the use of a personal automobile for business travel in accordance with the procedure and within the limits established by the Government of the Republic. Thus, in accordance with § 87(6) of the Constitution and under § 3(1) of the 1998 Social Tax Act the Government of the Republic had to issue a regulation establishing the procedure and the limits. The Regulation of 2000, which established the new procedure and re-established the same limits and declared the Regulation of 1993 invalid was issued under the Income Tax Act, not under the 1998

Social Tax Act.

10. The 1998 Social Tax Act did not provide that the Regulation of 1993 continued to be applicable during the period of validity of the 1998 Social Tax Act. § 3(1) of the Act contained a norm delegating authority to issue a new regulation. Validity of the Regulation of 1993 after the invalidation of the Act containing the norm delegating relevant authority is in conflict with the objective of § 87(6) of the Constitution. § 87(6) of the Constitution guarantees the leading role of the Riigikogu in enacting laws. The validity of the Regulation of 1993 would enable the Government of the Republic to ignore the changes brought about by the new Act. The conflict with the referred provision of the Constitution also consists in the failure to fulfil the task imposed by the Riigikogu on the Government of the Republic to establish the procedure for and the limits of reimbursement of expenses for the use of personal automobiles for business travel.

11. Validity of the Regulation of 1993 after the invalidation of the Act containing the norm delegating relevant authority is also in conflict with the principle of legal certainty. Proceeding from the delegation norm the addressees of the 1998 Social Tax Act had a legitimate expectation that the procedure and limits provided for by the Act will be established in due time. The principle that application of a regulation issued prior to a norm delegating relevant authority violates legal certainty has already been explained in the judgment of the Constitutional Review Chamber of the Supreme Court of 17 June 1998 (RT I 1998, 58, 939).

12. The fact that the Regulation of 1993 was unconstitutional or that the necessary regulation was not issued can not give rise to the conclusion that full amount of every compensation paid for the use of a personal automobile during the period when the Regulation of 1993 was declared unconstitutional or when there was no pertinent regulation should be subjected to taxation with social tax. Such a conclusion would be in conflict with the principle of legal certainty. Upon imposition of social tax one has to recognise the right of a tax payer, upon paying social tax, to proceed from the limit of 500 kroons per month, established by the invalid Regulation of 1993. In relation to income tax the same limit has been imposed by the Regulation of 2000.

13. The petition of the Järva County Court should be satisfied. As the Government of the Republic has declared the Regulation of 1993 invalid as of 1 March 2000, the Chamber confines itself to establishing the unconstitutionality of the Regulation to the extent that it imposes social tax.

Proceeding from § 4(1)4) of the Constitutional Review Court Procedure Act **the Constitutional Review Chamber has decided:**

To declare that the Government of the Republic Regulation no. 161 of 27 May 1993 "Reimbursement of expenses for the use of personal automobiles for business travel", to the extent that it imposed social tax, was unconstitutional as of 1 January 1999.

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

U. Lõhmus

Chairman of the Constitutional Review Chamber

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