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## Constitutional judgment 3-4-1-14-15

### JUDGMENT

in the name of the Republic of Estonia

Case number	3-4-1-14-15
Date	18 May 2015
Formation	Chairman: Priit Pikamäe: members: Eerik Kergandberg, Saale Laos, Ivo Pilving and Jüri Pöld
Case	Constitutional review of clause 11 of subsection 3 of § 11 of Regulation no. 16 of the Tallinn City Council of 19 June 2012 "Taxi Service Rules for Tallinn"
Basis for procedure	Judgment of the Harju County Court of 6 March 2015 in case no. 4-14-10089
Hearing	Written proceedings

### OPERATIVE PART

To dismiss the request submitted by the Harju County Court.

### FACTS AND COURSE OF PROCEDURE

1. By a decision of the Traffic Procedure Division of the Traffic Supervision Centre of the Law Enforcement Office of the Northern Prefecture of the Police and Border Guard Board in misdemeanour case no. 2316.14.009671, a fine of 40 euros was imposed on Toivo Kadu on the basis of subsection 1 of § 54<sup>2</sup> of the Public Transport Act (PTA). According to the decision, T. Kadu parked a taxi in Tallinn at 2:40 p.m. on 17 October 2014 in a place where it was prohibited, i.e. outside a properly marked taxi stop in a public unguarded fee-based zone in the centre of Tallinn. By doing so, he violated clause 11 of subsection 3 of § 11 of Regulation no. 16 of the Tallinn City Council of 19 June 2012 and committed a misdemeanour qualified under subsection 1 of § 241 of the Traffic Act (TA) and subsection 1 of § 54<sup>2</sup> of the Public

2. The authority that conducted extrajudicial proceedings noted in the decision that in the misdemeanour case there was no dispute over the fact that T. Kadu parked a taxi in the fee-based unguarded parking zone in the Old Town of Tallinn, but T. Kadu's statement that a customer had pre-ordered the taxi to the location was not proven. The authority that conducted extrajudicial proceedings took the view that the burden of proof was reversed and that the person subject to the proceedings should have proven that a customer pre-ordered the taxi to the location. T. Kadu did not submit any evidence to confirm his statement that the taxi was pre-ordered and did not make his statement verifiable. The authority explained that the proceedings at the parking lot lasted for over half an hour, but no customer came to the taxi during that time.

3. On 1 December 2014, T. Kadu submitted to the Harju County Court a claim where he requested that the misdemeanour decision be annulled, because his acts did not amount to the requisite elements of a misdemeanour and his rights were seriously violated in the misdemeanour proceedings. The claimant also asked the court to verify if clause 11 of subsection 3 of § 11 of Regulation no. 16 of the Tallinn City Council of 19 June 2012 is in accordance with the Constitution. The claimant explained that he parked in a place designated for parking, he had paid for parking and he was waiting for a customer who had pre-ordered the taxi.

4. The authority that conducted the extrajudicial proceedings argued against the appeal and submitted that the claim should be dismissed and that the misdemeanour decision of the Traffic Procedure Division of the Traffic Supervision Centre of the Law Enforcement Office of the Northern Prefecture of the Police and Border Guard Board should be upheld.

5. At the hearing, T. Kadu stood by his submissions made in the claim. At the hearing, a witness gave statements and confirmed that on the previous day (16 October 2014) he had pre-ordered a taxi to wait for him near McDonald's in Viru tänav, but the ride never took place, because of a change of plans.

## **JUDGMENT OF HARJU COUNTY COURT**

6. By a judgment of 6 March 2015, the Harju County Court granted T. Kadu's claim and annulled the decision of the Traffic Procedure Division of the Traffic Supervision Centre of the Law Enforcement Office of the Northern Prefecture of the Police and Border Guard Board of 13 November 2014. The county court declared clause 11 of subsection 3 of § 11 of Regulation no. 16 of the Tallinn City Council of 19 June 2012 unconstitutional and did not apply it.

7. The county court took the view that there was no substantive dispute in the misdemeanour case over whether T. Kadu parked his taxi next to the flower pavilions in Viru tänav, waiting for a customer, and that he had paid for parking. This is confirmed by written evidence gathered in the misdemeanour case and by the statements of the witness.

8. According to the estimate of the county court, clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn is a relevant provision that is of decisive importance in adjudicating the court case. It limits the parking of taxis in a public fee-based parking zone and the claimant was fined for parking a taxi in a place prohibited for such purpose, outside a properly marked taxi stop in the public fee-based area in the centre of Tallinn.

9. The relevant provision infringes the right to freely choose a field of activity and occupation (subsection 1 of 29 of the Constitution), the freedom of enterprise (§ 31 of the Constitution) and the fundamental right of equality (§ 12 of the Constitution). The restriction established in clause 11 of subsection 3 of § 11 of the Taxi Service Rules negatively affects the providers of taxi services because the taxi driver is prohibited to park the vehicle used as a taxi while he waits for

customers in the public parking area of the city and must look for a taxi stop where he can stop. The rights of the taxi driver are also affected by whether there are any vacancies at all at the taxi stop. Clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn treats a person who provides taxi services with an automobile and other persons who want to park an automobile in a different way, even though from the point of view of parking, an ordinary road user and a taxi driver are in a similar situation, as a result of which they must also be treated equally. According to the county court, there is no reasonable or relevant reason for treating them differently.

**10.** Based on subsection 1 of § 3 and subsection 1 of § 154 of the Constitution, the Tallinn City Council can impose restrictions on the fundamental rights of taxi service providers only if the law grants the respective authorisation to the municipality. Upon exercising such authority, the municipality must, among other things, take into account that the authorisation must be exercised properly, i.e. the municipality cannot start resolving issues that the law does not authorise it to resolve or establish any disproportionate restrictions on taxi service providers by legal instruments.

**11.** The Taxi Service Rules for Tallinn have been established on the basis of subsection 1 of § 6 of the Local Self-Government Organisation Act and clause 2 of subsection 1, subsection 4 of § 34, subsections 1 and 3 of 39 and subsection 2 of § 52 of the PTA and in accordance with Regulation no. 141 of the Minister of Economic Affairs and Communications of 26 May 2004 “General rules for regular carriage of passengers by bus, occasional carriage of passengers by bus, taxi service and carriage of baggage” (hereinafter the General Rules). None of the aforementioned provisions authorise the Tallinn City Council to regulate parking, incl. the parking of taxis in Tallinn. It does not follow from the aforementioned regulation of the Minister of Economic Affairs and Communications that a local authority could restrict the fundamental rights of persons. Although subsection 5 of § 15 of the regulation of the Minister of Economic Affairs and Communications stipulates that the road owner, acting in accordance with the traffic safety rules, determines the places where a taxi can stay while waiting for a customer (except for a pre-ordered taxi), the regulation merely grants the right to establish taxi stops, i.e. places where only taxis can stay. This provision cannot be interpreted broadly in order to find that a local authority has the right to prohibit the parking of taxis outside taxi stops. The city council does have the right to adopt taxi service rules, but none of the provisions of the taxi service rules can conflict with other legal instruments or restrict the fundamental rights of persons. According to the court, the authorisation of the Tallinn City Council to restrict fundamental rights does not arise from the Traffic Act either.

**12.** The county court held that the local authority lacked the authorisation to establish such legislation and, therefore, clause 11 of subsection 3 of § 11 of the Taxi Service Rules are unconstitutional. The county court also took the view that, given the negative impact of clause 11 of subsection 3 of § 11 of the Taxi Service Rules on taxi drivers, the purpose of ensuring smooth and safe traffic does not outweigh the infringement of taxi drivers' rights.

## **OPINIONS OF PARTIES**

### **Tallinn City Council**

**13.-18.** [Omitted.]

### **T. Kadu, the claimant**

**19.-21.** [Omitted.]

### **Police and Border Guard Board**

**22.** [Omitted.]

### **Chancellor of Justice**

**23.-28.** [Omitted.]

## Minister of Justice

29.-32. [Omitted.]

### CONTESTED PROVISION

33. Clause 11 of subsection 3 of § 11 of Regulation no. 16 of the Tallinn City Council of 19 June 2012 "Taxi Service Rules for Tallinn":

"(3) A taxi driver is prohibited to:

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11) park a taxi (except for a pre-ordered taxi) outside a properly marked taxi stop in an unguarded fee-based parking zone located in a public fee-based parking area in the city centre and in an unguarded fee-based parking zone in the city centre where a heightened fee rate is applied (downtown)."

### OPINION OF CHAMBER

34. According to the first sentence of subsection 2 of § 14 of the JCRPA, upon adjudication of a case based on a court judgment or order, the Supreme Court may repeal a legislative act or a provision thereof which is relevant to the adjudication of the case or declare them to be in conflict with the Constitution. According to the case law of the Supreme Court, a provision is relevant if the Court, applying it upon adjudication of the case, should, in the event of its unconstitutionality, have to decide otherwise than in the event of its constitutionality (see the 22 December 2000 judgment of the Supreme Court *en banc* in case no. 3-4-1-10-00, para. 10; the 28 October 2002 judgment in case no. 3-4-1-5-02, para. 15). It is important that the court that submits a request to the Supreme Court is convinced that this very act or another legal instrument must be applied upon adjudication of the dispute and that any other solution is precluded. The court cannot analyse the constitutionality of rules that have been accidentally or unfoundedly applied to the claimant (the 3 July 2008 order of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-9-08, para. 15).

35. By a judgment of 6 March 2015, the Harju County Court declared the contested provision unconstitutional and did not apply it, adjudicating a claim filed against a decision of an authority that conducted extrajudicial proceedings in a misdemeanour case. The authority imposed on T. Kadu a fine of 40 euros (ten fine units), arguing that T. Kadu committed an act that can be qualified as a misdemeanour under subsection 1 of § 54<sup>2</sup> of the PTA as well as subsection 1 of § 241 of the TA. Subsection 1 of § 54<sup>2</sup> of the PTA provides for a misdemeanour penalty in the event of violation of the requirements for carriage by bus, tram, trolleybus or taxi and for carriage of baggage by a bus driver, tram driver, trolleybus driver or taxi driver. Subsection 1 of § 241 of the TA provides for a penalty for parking a vehicle in an unauthorised place or in violation of the parking rules or manner indicated by a traffic control device.

36. Both subsection 1 of § 54<sup>2</sup> of the PTA as well as subsection 1 of § 241 of the TA are referential penalty provisions whereby the prerequisite for the imposition of a misdemeanour penalty is the failure to perform an obligation or violation of a prohibition set out in another provision of law. In the misdemeanour case of T. Kadu, the prohibition for the violation of which the authority penalised him arose from clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn, which prohibits parking taxis in the Old Town and downtown parking zone of the public unguarded fee-based parking area in the centre of Tallinn. It appears from the materials of the case that T. Kadu parked a taxi in the public unguarded fee-based parking zone of the Old Town at Viru 23 in Tallinn on 17 October 2014.

37. Clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn not only provides for a prohibition on parking taxis in the public unguarded fee-based parking zone of the Old Town and downtown of Tallinn, but also for an exception

to the prohibition. It is, in fact, permitted to park a taxi in the public unguarded fee-based parking zone of the Old Town and downtown of Tallinn if the taxi has been pre-ordered. The judgment of the county court reads that there was no dispute in the case over the fact that T. Kadu was waiting for a customer when parking in Tallinn in Viru tänav at 2:40 p.m. on 17 October 2014 and the statements of the witness heard at the court hearing also confirm it. Thus, upon adjudicating the case, the county court considered as proven a fact based on which the court should have applied the exception to the general prohibition on parking taxis, which was set out in clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn. It follows from this fact that T. Kadu did not violate the prohibition on parking taxis, which was set out in clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn, and his behaviour did not amount to the requisite elements of the misdemeanour set out in subsection 1 of § 54<sup>2</sup> of the PTA or subsection 1 of § 241 of the TA.

**38.** Under clause 1 of subsection 1 of § 29 of the Code of Misdemeanour Procedure (CMP), misdemeanour proceedings must be terminated if the requisite elements of the misdemeanour are missing. Under clause 1 of § 133 of the CMP, upon hearing a claim filed against the decision of the authority that conducted extrajudicial proceedings, the county court must identify in the misdemeanour case whether there are any circumstances set out in § 29 of the CMP which preclude misdemeanour proceedings. Thereby the county court must adjudicate the misdemeanour case to the full extent, regardless of the limits of the filed claim, verifying the factual and legal circumstances that served as the basis for the decision of the authority that conducted the extrajudicial proceedings (the ab ovo principle, subsection 2 of § 123 of the CMP). If there is a ground set out in clause 1 of subsection 1 of § 29 of the CMP, the court will make a judgment terminating the misdemeanour proceedings (clause 2 of subsection 1 of § 107 and subsection 1 of 134 of the CMP). Since T. Kadu did not violate the prohibition on parking taxis, which was imposed by the contested provision, and his acts lacked the requisite elements of the misdemeanour, the county court should have annulled the penalty decision of the authority that conducted the extrajudicial proceedings and terminate the misdemeanour proceedings against T. Kadu without initiating the constitutional review proceedings.

**39.** The Chamber finds that clause 11 of subsection 3 of § 11 of the Taxi Service Rules for Tallinn was not the provision of decisive importance in adjudicating the case to the extent that it establishes the prohibition to park taxis in the public unguarded fee-based parking zone of the Old Town and downtown of Tallinn. To annul the decision of the authority, the county court did not have to declare the prohibition unconstitutional and refuse to apply it, but merely apply the exception established for pre-ordered taxis, which was included in the same provision.

**40.** In view of the above and based on clause 6 of subsection 1 of § 15 of the JCRPA, the Chamber dismisses the request submitted by the Harju County Court.

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