Constitutional judgment 3-4-1-31-15

SUPREME COURT

CONSTITUTIONAL REVIEW CHAMBER

JUDGMENT

in the name of the Republic of Estonia

Case number	3-4-1-31-15
Date of judgment	10 May 2016
Composition of court	Chairman: Priit Pikamäe; members: Hannes Kiris, Indrek Koolmeister, Viive Ligi and Jaak Luik
Basis for proceedings	Tartu Administrative Court order of 26 November 2015 in administrative case No 3-15-2595
Hearing	Written procedure

OPERATIVE PART

To deny the request by Tartu Administrative Court.

FACTS AND COURSE OF PROCEEDINGS

1. By decision No 76497-2 of 6 August 2015 the Social Insurance Board (SIB) terminated payment of family allowance to a person (father) residing in the jurisdictional district of Tartu Administrative Court, due to the children living with their mother. The decision was made by a chief specialist of the Family Benefits Unit and it is noted that the decision was made at Jõgeva. On 15 October 2015, the person brought a complaint in Tartu Administrative Court, seeking to annul the decision. The SIB requested transfer of the case to Tallinn Administrative Court as the court having jurisdiction.

TARTU ADMINISTRATIVE COURT ORDER

2. Tartu Administrative Court denied the SIB's request to transfer the case to Tallinn Administrative Court as the court having jurisdiction, and set aside and declared unconstitutional § 7(1) and § 8 (4)–(6) of the Code of Administrative Court Procedure (CACP) to the extent that they oblige an applicant residing within the jurisdictional district of Tartu Administrative Court to file a complaint against the SIB with Tallinn Administrative Court.

3. Under the statutes of the SIB (version in effect since 1 December 2014), the structural units of the SIB no longer include regional offices, and under § 1(5) of the statutes the seat of the SIB is only at Endla 8, Tallinn. The SIB no longer operates based on the territorial principle; instead its structural units are specialised according to fields of activity. It is a coincidence that the place of work of the official making the decision was at Jõgeva, i.e. the jurisdictional district of Tartu Administrative Court.

4. § 7(1) and § 8(4)–(6) of the CACP form an integrated regulation of jurisdiction, the combined effect of which determines which administrative court has jurisdiction in a case. Under § 8(6) of the CACP, if the respondent is the Tax and Customs Board (TCB) a complaint is brought in the court having jurisdiction over the location of residence or seat of the applicant. Until 30 November 2012, the TCB also had structural units located elsewhere, while under the statutes in effect since 1 December 2012 the TCB is only located in Tallinn. Since 1 December 2012, extraordinary jurisdiction under § 8(6) of the CACP was established due to the abolition of regional structural units.

5. Under § 15(1) (first sentence) of the Constitution, everyone whose rights and freedoms have been violated has the right of recourse to the courts. Interference with this right may only take place for protection of other fundamental rights or constitutional values. Formally, the regulation on jurisdiction has not been amended in the instant case, but with the entry into force of the new version of the statutes it obtained new content in substantive terms. On the level of constitutional principles, no purpose exists for interference with the fundamental right established under § 15(1) of the Constitution. Consequently, the contested provisions conflict with the Constitution to the extent that they oblige an applicant residing within the jurisdictional district of Tartu Administrative Court to file a complaint against the SIB with Tallinn Administrative Court.

6. Under § 24(2) of the Constitution, everyone is entitled to attend a hearing held by a court in his or her case. This right also extends to third parties. In Tartu, persons could attend a court hearing alongside their day-to-day activities, while to attend a hearing in Tallinn they would need to take off the whole day. The interference is alleviated by the possibility to hold a hearing elsewhere than in the courthouse in whose jurisdictional district is the location according to which jurisdiction is established. However, an applicant or a third party has neither the right to request that a hearing be held outside Tallinn, nor the right to request a hearing in the form of a procedural conference. Moreover, communicating via technical means cannot be considered completely equal to immediate communication in the same room. Interference with this fundamental right has no legitimate purpose either.

7. The contested provisions also conflict with § 12(1) of the Constitution. Persons bringing a complaint against the TCB or the SIB constitute comparable groups. The structure of both institutions was changed similarly. Bringing a complaint against the TCB is subject to extraordinary jurisdiction, which is more convenient for persons. It could also be assumed that a person having recourse to the court in a social insurance matter is in need of greater protection than a person having recourse to the court in a tax matter, as the latter disputes are more often concerned with issues of economic or professional activity.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

Riigikogu

8.–27. [Not translated.]

PROVISIONS DECLARED UNCONSTITUTIONAL

28. § 7(1) of the Code of Administrative Court Procedure:

"A complaint is to be brought in the court having jurisdiction of the respondent's seat or place of service. If the subject matter of the dispute consists in acts of the respondent's regional unit or official, or the harm caused by such acts or the consequences of such acts, the action is to be brought in the court having jurisdiction of the seat of the regional unit or the place of service of the official."

29. § 8(4)–(6) of the Code of Administrative Court Procedure:

"(4) In the case of a service dispute, a complaint is brought in the court having jurisdiction of the location of the place of service.

(5) A person deprived of his or her liberty must bring a complaint in the court having jurisdiction of the place of his or her detention.

(6) If the respondent is the Tax and Customs Board a complaint is brought in the court having jurisdiction of the location of residence or seat of the applicant."

OPINION OF THE CHAMBER

30. First, the Chamber will identify the relevant norms and the fundamental rights that have been interfered with. Then it will deal with the legitimate aim and review the proportionality of the instances of interference with regard to the legitimate aim.

31. The Administrative Court found § 7(1) and § 8(4)–(6) to be of relevance.

32. In the opinion of the Chamber, not all of these provisions are relevant. This is an administrative case in which a father filed a complaint against the decision of the SIB by which it had terminated payment of the family allowance to him. Under § 7(1) of the CACP, such a complaint should be brought according to the seat of the respondent – in this case the SIB – i.e. with Tallinn Administrative Court. However, § 8(4) of the CACP regulates jurisdiction in the case of a service dispute, while § 8(5) determines jurisdiction in cases where a person has been deprived of their liberty, and § 8(6) prescribes jurisdiction in disputes with the Tax and Customs Board. As the administrative case on which the present constitutional review case is based is not concerned with a service dispute or deprivation of anyone's liberty, and the respondent is not the TCB, the provisions of § 8(4)–(6) are not relevant. Provisions laying down exceptions for other situations cannot be considered relevant because the initiator of supervision proceedings believes that statutory regulation should also be similar in the current case. Also, § 8(4)–(6) of the CACP cannot be considered relevant for the reason set out by the Minister of Justice, stating that this would cover the integrated regulation of jurisdiction. In addition, jurisdiction is also regulated by § 8(1)–(3) and § 9 of the CACP. As the instant case reached the Supreme Court in the frame of specific constitutional review of legislation, under § 14(2) of the Constitutional Review Court Procedure Act this frame only allows assessment of the constitutionality of a legal norm having relevance in the case at hand.

33. The Chancellor of Justice was of the opinion that § 7(1) of the CACP should be interpreted as conforming to the Constitution, determining the substance of the terms *seat of the respondent* and *regional structural unit of the respondent* in view of the actual regional nature of the institution, and as in the instant case the decision was made in the jurisdictional district of the administrative court of the applicant's residence, that administrative court should have jurisdiction in the matter. The Chamber does not agree with this interpretation. § 7(1) (second sentence) of the CACP states: "If the subject matter of the dispute consists in acts of the respondent's regional unit or official, or the harm caused by such acts or the consequences of such acts, the action is to be brought in the court having jurisdiction of the seat of the regional unit or the place of service of the official." Under § 1(5) of the SIB statutes, SIB's seat is only at Endla 8, Tallinn. The

SIB decision contested in the present administrative court proceedings was made by a chief specialist of the Family Benefits Unit at Jõgeva. Under § 4(2) of the SIB statutes, the Family Benefits Unit is a structural unit of the SIB and its duties include, inter alia, granting state family allowances and benefits. The SIB statutes do not indicate that the institution has any regional structural units. Persons are received at local customer service units whose main duties include providing a competent service and counselling within the institution's areas of activity (SIB statutes § 4(2) cl. 8); customer service contact details on the SIB website). Other SIB structural units providing a service to customers are specialised according to areas of activity and serve the whole of Estonia despite the fact that even the specialised units are in reality spread out in different locations all over Estonia. Arising from SIB's current structure and division of work, decisions at different locations of the institution are not made based on an applicant's or addressee's residence or seat. The fact that in the instant case the decision in respect of the person was made by an SIB structural unit located within the jurisdictional district of the administrative court of the person's residence was due to the respondent's specialised division of work, and it need not be so in another case or with regard to other types of SIB matters. The Supreme Court cannot rely on a random coincidence in constitutional review proceedings, as assessment of the constitutionality of a norm also has an effect *erga omnes*.

34. On that basis, in the opinion of the Chamber only § 7(1) of the CACP is relevant in the instant case to the extent that it prescribes an obligation for an applicant residing in the jurisdictional district of Tartu Administrative Court to file a complaint against the SIB with Tallinn Administrative Court. In the case of constitutionality of § 7(1) of the CACP, Tartu Administrative Court has no competence to adjudicate disputes concerning termination of payment of family allowances by the SIB, regardless of an applicant's residence.

35. Next, the Chamber will identify fundamental rights that have been interfered with.

36. Under § 15(1) of the Constitution, everyone whose rights and freedoms have been violated has the right of recourse to the courts. The Chamber notes that the substantive scope of protection of the fundamental right of recourse to the courts under § 15(1) of the Constitution covers all aspects of initiating judicial proceedings for protection of subjective rights the protection of which cannot be deduced from another fundamental right. Inter alia, the fundamental right of recourse to the courts under § 15(1) of the Constitution, in combination with § 10(2) cl. 14) and § 148 of the Constitution, gives rise to the duty of the legislator to establish a judicial system that ensures access to the administration of justice for everyone without unreasonable effort. Norms of procedural law on jurisdiction restrict the opportunity of applicants to have recourse to a court of their choice, including the right to bring a complaint in the administrative court closest to their residence. As § 7(1) of the CACP refers everyone, regardless of their residence, to have recourse to Tallinn Administrative Court for bringing a complaint against the SIB as respondent based on its seat, even though it might not be the closest available administrative court to them, the Chamber believes that this jurisdictional norm interferes with the fundamental right under § 15(1) of the Constitution.

37. Under § 14(2) of the Constitution, everyone is entitled to attend a hearing held by a court in his or her case. Norms which legally or factually complicate a person's opportunity to attend a hearing held in their case interfere with this right. Having achieved initiation of administrative court proceedings for protection of one's subjective rights, further conduct of the court proceedings presumes the opportunity for an applicant to attend the judicial hearing in their case. A situation where a person must travel farther than the closest courthouse to attend the hearing in their case impedes this possibility. Hence, it consitutes an interference with the fundamental right under § 24(2) of the Constitution.

38. Interference with the fundamental right to equality established under § 12(1) of the Constitution can only occur in the case of unequal treatment of people in a similar situation (Supreme Court *en banc* judgment of 27 June 2005 in case No 3-4-1-2-05, para. 40). § 8(6) of the CACP states: "If the respondent is the Tax and Customs Board a complaint is brought in the court having jurisdiction over the location of residence or seat of the applicant." This leads to the conclusion that current administrative procedural law, in determining the jurisdiction of all administrative cases, does not proceed only from the principle of the seat of the respondent. Under § 4 of the TCB statutes, in the legal sense the seat of the TCB is also only in Tallinn,

similarly to the SIB. Both institutions have a similar structure under which specialised units of the institution are located all over Estonia and decisions in respect of persons are not made based on their residence or seat. In this respect, persons bringing a complaint against the TCB and the SIB are in a similar situation. Their situation is different in terms of procedural rules on administrative court jurisdiction, as persons bringing a complaint against the TCB can do so according to their residence or seat, while those bringing a complaint against the SIB must have recourse only to Tallinn Administrative Court. Hence, those bringing a complaint against the SIB are treated less favourably in the exercise of the right of recourse to the court than applicants against the TCB. Thus, the provisions on jurisdiction under § 7(1) of the CACP also interfere with the fundamental right to equality under § 12(1) of the Constitution.

39. Next, the Chamber will identify the legitimate aim of the above instances of interference. The fundamental right to equality under § 12(1) of the Constitution may be restricted for any reason compatible with the Constitution, i.e. it is a fundamental right subject to a simple statutory reservation (Supreme Court *en banc* judgment of 7 June 2011 in case No 3-4-1-12-10, para. 31). The fundamental right under § 15(1) of the Constitution is not subject to a statutory reservation and its restriction may be justified only by other fundamental rights or constitutional values (see, e.g., Supreme Court *en banc* judgment of 16 May 2008 in case No 3-1-1-88-07, para. 43). Also the fundamental right under § 24(2) of the Constitution to attend a hearing held by a court in one's case is not subject to a statutory reservation.

40. Under the provisions of the Constitution, determining jurisdiction is the duty of the legislator. While § 15 of the Constitution establishes the general fundamental right of recourse to the courts, § 24(1) of the Constitution provides for everyone's right to the jurisdiction of a court specified by law. The latter should ensure distribution of cases between the courts on the basis of objective pre-determined criteria, thus avoiding arbitrary distribution of cases between the courts. By avoiding *ad hoc* distribution of cases between the courts, the fundamental right to the jurisdiction of a court specified by law under § 24(1) of the Constitution should ensure independence of the administration of justice. For this reason, regulation of jurisdiction in procedural codes must, inter alia, guarantee that determination of the court adjudicating a matter is not motivated by a wish to obtain a specific judicial decision. In terms of administration of the judiciary, determining jurisdiction by lawful procedures should ensure distribution of work between judges, taking into account the size of a court, thus ensuring effective functioning of the judicial system and, on the other hand, optimal access by persons to the administration of justice.

41. Next, the Chamber will deal with the issue of the purpose of generally assigning jurisdiction in administrative court proceedings based on the seat of the respondent. An objective criterion on which to rely when assigning jurisdiction is the seat or residence of either the applicant or the respondent. Taking the seat of the respondent as a basis allows for better planning of the workload of the court and, at the final instance, ensuring a well-functioning and economical judicial system. Persons can easily change their residence or seat, while for a respondent changing the seat requires structural reorganisation, giving the legislator an opportunity to introduce necessary changes in the court system as well, for example by establishing extraordinary jurisdiction as in the case of the TCB. Assigning jurisdiction based on the seat of the respondent also avoids ambiguity, which could occur in the case of assigning jurisdiction arising from the applicant when the same administrative act or measure is contested by several persons whose residence or seat is within the jurisdictional district of different administrative courts. Moreover, administrative authorities often participate in judicial proceedings of their cases, while as a rule individuals rarely file complaints with an administrative court against a specific administrative authority. Thus, jurisdiction arising from a respondent reduces the costs of participation and representation in judicial proceedings for administrative authorities.

42. Additionally, regulation of jurisdiction which refers persons to have recourse to the administrative court in the same region where the administrative authority against whom complaints are brought has a seat, presumably establishes in that court a better substantive competence for adjudication of such cases, as judges will specialise in them. The latter, in turn, probably also ensures more uniform judicial practice. Specialisation in certain types of cases allows for more economical adjudication of cases. Effective functioning of the judicial system is a value on account of which fundamental rights not subject to statutory

reservation may be restricted. Under the preamble to the Constitution, the Estonian state is founded, inter alia, on justice, and effective functioning of the judicial system is important to ensure this (Supreme Court *en banc* judgment of 17 March 2003 in case No 3-1-3-10-02, para. 28). § 14 of the Constitution imposes on the state the duty to guarantee fundamental rights and freedoms. Inter alia, these are guaranteed by a well-functioning and economical judicial system. Thus, economy of judicial proceedings is a legitimate aim for interference with § 12(1), § 15(1) and § 24(2) of the Constitution.

43. Next, the Chamber will review the proportionality of instances of interference with regard to the legitimate aim. The Chamber finds that even though the legislator has a broad discretion in assigning jurisdiction and deciding the seat of courts (see, in more detail, para. 53 below), this does not mean that the legislator may act arbitrarily in this respect. Deciding the seat of courts as well as regulating jurisdiction must be proportionate in respect of the fundamental rights thereby interfered with. The Chamber has no doubt that interference arising from regulation of jurisdiction based on the seat of a respondent under § 7(1) of the CACP is appropriate and necessary for achieving the aims sought. Assessment of the narrow proportionality of the measure in the instant case should take into account, in addition to the broad discretion of the legislator, on the one hand, the intensity of the interference with fundamental rights and, on the other hand, the importance of the aim.

44. First, the Chamber will weigh the intensity of the interference with the fundamental rights under § 15(1) and § 24(2) of the Constitution, respectively the right of recourse to the courts and the right to attend a hearing held by a court in one’s case.

45. Recourse to the courts within the meaning of § 15(1) of the Constitution cannot be given substance merely under the general norm in § 7(1) of the CACP in administrative proceedings. Under § 40(1) of the CACP, a complaint to an administrative court is brought in writing by post, by delivering it to the court in person or by having it delivered to the court by another person. Under subsection 2 of the same section, a written complaint may be delivered to any courthouse of an administrative or county court in Estonia, from which it is transmitted to the court that has jurisdiction in the matter. From the above provisions it follows that even though complaints against the SIB all over Estonia are subject to the jurisdiction of Tallinn Administrative Court, this does not give rise to an obligation for applicants to deliver their complaints necessarily to the capital. It should also not be overlooked that under § 40(1) cl. 2) of the CACP a complaint to an administrative court may also be brought by electronic means. The use of electronic means and digital signature by means of the ID card or Mobile-ID are fairly widespread in Estonia. Thus, a person can easily bring a complaint to an administrative court staying close to home or even without leaving home, regardless of which administrative court has jurisdiction in the matter. Thus, initiating judicial proceedings in an administrative court is not particularly dependent on the distance of the court from an applicant. On that basis, the requirement of § 7(1) of the CACP to bring a complaint to an administrative court according to the seat of the respondent interferes only insignificantly with the right of recourse to the courts, as the whole Estonian judicial network is competent to receive complaints arising from disputes in relationships in public law, and a complaint in a dispute subject to the jurisdiction of Tallinn Administrative Court may also be brought by post or electronically.

46. When assessing the intensity of interference with the fundamental right established under § 24(2) of the Constitution, it should first be noted that under § 131(1) of the CACP the court may hear a matter by way of written procedure if, according to the court’s assessment, the facts material for determining the matter can be ascertained without holding a court session and all parties and third parties have agreed to the matter being heard by way of written procedure, or it is evident that, in view of the legal rights at issue and the nature of the dispute, including cases in which the only issues disputed by the participants in the proceedings are points of law, the participants in the proceedings do not have any reason to insist that a court session be held. In the instant case, the SIB as a participant in the proceedings has submitted an opinion based on which, in 2015, of all the complaints brought against this administrative authority 70% (43 out of 61 cases) were adjudicated in written proceedings. Moreover, written procedure was also used for examining witnesses in many cases concerning establishment of a point of law, whereas the residence of a witness and the applicant was not necessarily in the same region in Estonia. Thus, SIB administrative court disputes are

overwhelmingly adjudicated in written proceedings, and applicants do not necessarily have to appear in court.

47. Even if a case is adjudicated at a court session, this does not mean an obligation for the participants in the proceedings to appear in the administrative court hearing the matter. Specifically, under § 129(2) (second sentence) of the CACP, having regard to the interests of the participants in the proceedings, the court may hold a session elsewhere than in the courthouse. Thus, in the case of justified need, participants in the proceedings may request the court to hold an external session at the courthouse closest to them. § 129(3) of the CACP refers, inter alia, to the possibility of applying § 350 of the Code of Civil Procedure in administrative court proceedings. Under § 350(1) of the Code of Civil Procedure, the court may organise a session in the form of a procedural conference, so that a participant in the proceedings or their representative or adviser has the opportunity to stay in another place at the time of the court session and perform procedural acts in real time at that place, and under subsection (2) a witness or expert who stays in another place may also be heard, and a participant in the proceedings who stays in another place may pose questions to them. Therefore, even when the court denies a request to hold an external session, a participant in the proceedings need not travel to the seat of the court but can communicate with the court by means of information technology. Systems enabling a procedural conference to be held exist in all towns and cities where courthouses are located (among administrative courts, only Tallinn Administrative Court's Pärnu courthouse at Rüütli Street does not have such a system, but a procedural conference system at Pärnu County Court's courthouse at Kuninga Street can be used). These ensure sufficiently convenient participation in a court session even for persons not used to such a system.

48. The right to attend a hearing held by a court in one's case includes the right to be informed about the case materials, i.e. access to the case file. Under § 88(6) of the CACP, as a rule, a participant in the proceedings is provided an opportunity to inspect the file in the courthouse in whose district lies the place which serves as the basis for assigning jurisdiction in the matter; having regard to the interests of the participants in the proceedings, the court may also permit inspection of the file elsewhere. Thus, if it is complicated for a person to come to the courthouse adjudicating the matter and they also cannot access the case file by electronic means, they can inspect the file at the courthouse closest to them. Other communication with the court (e.g. complying with the duty of explanation, submitting additional documents) usually takes place in writing by post or electronically, and does not require a visit to the courthouse.

49. If, despite the above possibilities, an applicant's direct presence at the hearing of a matter in the court adjudicating it is indispensable, they may request compensation of the expenses incurred on that account. § 108(1) of the CACP establishes the general principle that procedural expenses are borne by the party against whom judgment was entered. Procedural expenses also include any travel, postage, telecommunications and accommodation expenses incurred by a party on account of the proceedings, as well as wages or other permanent income forgone by the party (§ 103(1) cls 2)–3) CACP). Thus, if a person's action is successful, they are compensated for the expenses and loss of income incurred due to having had to travel to the court from a distance.

50. Finally, it should be noted that in view of the distances and the road network in Estonia, presumably it is possible to reach a courthouse in Tallinn after three or four hours of travel even from the remotest corner of continental Estonia, and public transport connections with the capital are good. When scheduling the starting time of a session, the court can take into account justified requests by the participants in the proceedings due to the need to get to the court session from outside Tallinn. On that basis, the rules on jurisdiction under § 7(1) of the CACP do not intensively interfere with the right to attend a hearing held by the court in one's case.

51. Next, the Chamber will weigh the intensity of the interference with the fundamental right to equality under § 12(1) of the Constitution. As noted above in para. 38 of the judgment, due to a rule on extraordinary jurisdiction existing under § 8(6) of the CACP those bringing a complaint against the SIB are treated less favourably than applicants against the TCB. In view of what was described in paras 44–50 of the judgment,

failure to lay down extraordinary jurisdiction for SIB related matters does not have a particularly profound effect, because should a case be subject to the jurisdiction of a court in another district an applicant can participate in judicial proceedings equally with persons who can bring a complaint to an administrative court based on their residence or seat.

52. Next, the Chamber will deal with the weight of the legitimate aim, i.e. economy of judicial proceedings. Economy of judicial proceedings is linked to efficient use of public funds. The state must spend prudently in order to finance all public functions to a reasonable extent (cf. Supreme Court *en banc* judgment of 26 June 2014 in case No 3-4-1-1-14, p 112). On that basis, the legitimate aim, namely to ensure economy of judicial proceedings, is sound.

53. The legislator has a broad discretion in establishing jurisdiction. Jurisdiction is closely linked to issues of location and distribution of work of the courts, resolution of which is to a large extent a legal policy decision to be made by the legislator. Location of courts and distribution of work among them is, in turn, related to the financing of the judicial system and to the state budget. The Supreme Court has previously expressed an opinion that in order to comply with the duty of guaranteeing fundamental rights and freedoms as required under the Preamble and § 14 of the Constitution, Estonia must ensure the existence of a sustainable budgetary policy (see Supreme Court judgment of 12 July 2012 in case No 3-4-1-6-12, para. 199). The Supreme Court has also found that the court of constitutional review must avoid a situation where development of budgetary policy would largely end up in the hands of the court (Constitutional Review Chamber judgment of 21 January 2004 in case No 3-4-1-7-03, para. 16).

54. Next, the Chamber will assess the justification for interference with fundamental rights established under § 12(1), § 15(1) and § 24(2) of the Constitution. Less favourable treatment of applicants against the SIB with regard to recourse to the court and attending the hearing in their case, as compared to applicants against the TCB, can first be justified by a time difference when the rule on extraordinary jurisdiction concerning the TCB under § 8(6) of the CACP was established and when a change in jurisdiction occurred resulting from the renewed structure of the SIB.

55. Although the legal opportunities to be present at the judicial hearing of one’s case from a distance were the same in 2012 as well as at the end of 2014, the actual spread of technology should also be taken into account. Use of the means of information technology has drastically increased in recent years, including in dealings with the authorities (information on the use of digital ID available online at www.id.ee [1]).

56. The Chamber admits that in the current situation different treatment of applicants against the TCB and the SIB with regard to recourse to the court and attending the hearing in their case cannot be justified merely by an increase in technological opportunities and digital competence of the population, as these conditions apply equally to both groups at the present time. However, additionally the justifications which the legislator may have had in mind, in particular considering its broad discretion, when making an exception from general regulation under the CACP regarding jurisdiction of complaints brought against the TCB should also be taken into account.

57. The difference in the number of cases concerning the TCB and the SIB adjudicated by administrative courts is about tenfold. In 2015, 422 TCB cases were adjudicated, of these 322 in Tallinn and 120 in Tartu Administrative Court. The SIB was a respondent only in 61 cases in 2015. The Chamber finds it reasonable that by making an exception with regard to the TCB the legislator essentially decided to avoid a significant increase of the workload in Tallinn Administrative Court and a similar decline in Tartu Administrative Court. A considerable change in the workload would require a change in the structure of the courts, which is a time-consuming task and might not be compatible with the aim of effective functioning of the judicial system as a whole. Thus, establishing an exception in one case does not mean that the legislator should respond to a reform of any other institution by introducing an additional exception to jurisdiction.

58. In establishing the general rule, as well as in laying down exceptions, the legislator is justified to take into account different aspects – in addition to the distance of the courts from participants in the proceedings

also the efficiency of the courts' work based on their size, the size of the population in a region, access to legal assistance close to the courts, opportunities to recruit judges, and other relevant considerations.

59. International law does not require either that the state should ensure the hearing of a case in a court as close to a person's home as possible. Also, no such recommendation has been made by international organisations. The European Commission for the Efficiency of Justice in its optional guidance (Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, CEPEJ(2013)7) has noted that the state should evaluate different factors when deciding on the optimum allocation of resources (p. 4). It is found that the geographical distribution of courts is often a remnant from earlier times and fails to take account of society's current needs, development of transportation, or opportunities offered by modern means of communication. There is no given optimum number of people to be served by a court (ibid., pp. 5–6). The highest productivity at European level is attained in courts with the number of judges between 40 and 80 (ibid., p. 8). The greater the use of information technology solutions the more remote the location of the court could be, and remote participation in hearings also reduces procedural costs (ibid., p. 10). Availability of legal advice in a region, and whether it is possible to recruit judges meeting high professional standards in a particular region, including in the future, are also factors to be considered (ibid., p. 11).

60. The European Network of the Councils of Justice in its report Judicial reform in Europe Report [2] 2011–2012 also notes that the distance of courts from people is growing as a result of reorganisation of judicial systems, but due to new technological solutions this is not seen as an obstacle (p. 6). Concentration of courts should be motivated, inter alia, by the need to more effectively use available resources (ibid., p. 8). In the Chamber's opinion, information technology solutions in Estonia are legally ensured and also widespread in practice.

61. In view of the low intensity of the interference with fundamental rights, the soundness of the legitimate aim, and the legislator's broad discretion in assigning jurisdiction, the Chamber is of the opinion that the contested regulation is constitutional. Consequently, and relying on § 15(1) cl. 6) of the Constitutional Review Court Procedure Act, the request by Tartu Administrative Court should be rejected.

62. In addition, the Chamber notes that the present judgment does not preclude establishing extraordinary jurisdiction for adjudication of complaints brought against the SIB in administrative court proceedings.

Dissenting opinion of Supreme Court Justice Indrek Koolmeister to the Supreme Court Court Constitutional Review Chamber judgment of 10 May 2016 in case No 3-4-1-31-15, joined by Supreme Court Justice Jaak Luik

I concur with the Chamber's opinion that § 8(4)–(6) of the Code of Administrative Court Procedure (CACP) are not relevant, and with the operative part of the Chamber's judgment which did not find § 7(1) of the CACP unconstitutional. However, as regards the reasoning of the judgment, I would like to note the following.

1. The rule under which a complaint with an administrative court is brought based on the respondent's seat or place of service leads to the centralisation of judicial power in the circumstances of centralisation of public authority characteristic of the present day. Claims that assigning jurisdiction based on the seat of the respondent allows for better planning of the workload of the courts and generally ensuring a well-functioning and economical judicial system (para. 42 of the judgment) contain a hidden conclusion that adjudication of administrative court cases should reasonably take place first and foremost at the main seat of

executive agencies, i.e. in Tallinn. Centralisation of judicial power in itself cannot be an independent constitutional value in organising the judicial system. In this regard, claims of increased efficiency and effectiveness of administration of justice as a result of such centralisation, as well as of increased economy of the court system or judicial proceedings are declarative and not based on specific analysis. All in all, the legitimate aim of the jurisdictional rule prescribed under § 7(1) of the CACP, which constitutes an interference with the rights established under § 15(1) and § 24(2) of the Constitution, has not been sufficiently and plausibly defined in the judgment. The judgment does not convince me that assigning jurisdiction based on the seat of an administrative authority rests immediately and directly on the interests of economy of judicial proceedings.

2. I cannot fully concur with the opinion that such organisation establishes substantive competence for adjudication of cases and more uniform judicial practice. The existence of one specialised court would probably lead to more uniform judicial practice, while the level of administration of justice as a whole might not rise – at the final instance, this would eliminate possible variation in judicial decisions in similar cases as an important source of development of judicial practice.

3. Concentration of judicial power in the capital has an impact on access of individuals to the administration of justice. In the opinion of the majority of the Chamber, possible interference can be overcome by an opportunity to bring a complaint in writing by post or electronically or by delivering it to any courthouse. The judgment emphasises the opportunity to communicate by means of information technology, including in the form of a procedural conference, etc. Another argument put forward is that a large number of administrative court proceedings take place in written form. Nonetheless, I find that despite the above measures the organisation of administration of justice should ensure sufficient opportunities for everyone to attend a hearing held in their case. Without underestimating the usefulness of the above technological solutions, the organisation of administration of justice must not, without obvious necessity, impose restrictions on persons to be present at the hearing of their case. I find that the actual so-to-say levelling effect of the opportunities mentioned in the judgment in terms of the fundamental right that has been interfered with is to a large extent hypothetical. To provide a reasoned assessment, it would be necessary to take into account, inter alia, the distinct features of the aims of the administrative court procedure and specific types of administrative cases, as well as the structure of the participants in the proceedings (applicants).

4. The majority of the Chamber has failed to give regard to the distinctiveness of users of services of the Social Insurance Board. These are persons in need of assistance from the state due to their age, health, family or financial reasons. They are socially vulnerable persons, in particular natural persons with different physical difficulties in coping. Therefore, equating them in the comparison with the addresses of the Tax and Customs Board (to a considerable extent undertakings, legal persons) is not justified. In view of the peculiarity of the persons, their ability to make extensive use of the technological solutions mentioned in the judgment is also questionable.

5. However, the above considerations do not necessitate declaring the relevant provision unconstitutional. One should agree with the claim that the legislator has a broad discretion in assigning jurisdiction. However, within this margin of discretion the relevant factors need to be taken into account, first and foremost the interests of judicial protection of the rights of individuals. I find it expedient that with respect to such essential services as in the present case, the opportunities for individuals to have access to the court should be significantly more favourable than the general rule established under § 7 of the CACP. The legislator should consider establishing extraordinary jurisdiction here as well.

Links
[1] http://www.id.ee

[2] http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_judicial_reform_def.pdf