Constitutional judgment 3-3-1-48-16

S U P R E M E C O U R T

EN BANC

JUDGMENT

in the name of the Republic of Estonia

Case number	3-3-1-48-16
Date of judgment	21 February 2017
Composition of court	Chairman: Priit Pikamäe; members: Peeter Jerofejev, Eerik Kergand Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Saale Laos, V Luik, Nele Parrest, Ivo Pilving, Jüri Põld, Paavo Randma, Peeter Ro Seppik and Tambet Tampuu
Case	Appeal by JCDecaux Eesti OÜ, Clear Channel Estonia OÜ, Neste E AS seeking annulment of Pärnu City Government decision of 29 Au order against Pärnu City Government for execution of claims for ref 2014 and 30 July 2014
Participants in the proceedings	Appellants JCDecaux Eesti OÜ, Clear Channel Estonia OÜ, Neste E AS Joint authorised representatives of the appellants sworn advocate Al advocate Carri Ginter

Contested judicial decision	Tallinn Court of Appeal judgment of 30 March 2016 in administrati 52223
Basis for proceedings	Appeal in cassation by JCDecaux Eesti OÜ, Clear Channel Estonia AS, and Selver AS
Hearing	Written procedure

OPERATIVE PART

1. To dismiss the appeal in cassation by JCDecaux Eesti OÜ, Clear Channel Estonia OÜ, Neste Eesti AS and Selver AS and to uphold the Tallinn Court of Appeal judgment of 30 March 2016 in administrative case No 3-14-52223.

2. To leave the procedural expenses with regard to the appeal in cassation for the participants in proceedings themselves to bear.

3. To transfer the security to public revenues.

FACTS AND COURSE OF PROCEEDINGS

1. In the period from 1 June 2011 to 1 July 2014, Neste Eesti AS and Selver AS paid to Pärnu City advertising tax in the amount of 4301 euros and 96 cents and 25 488 euros and 24 cents, respectively. In the period from 1 July 2011 to 31 July 2014, JCDecaux Eesti OÜ and Clear Channel Estonia OÜ paid to Pärnu City advertising tax in the amount of 44 061 euros and 5375 euros, respectively.

2. On 27 June 2014 Neste Eesti AS and Selver AS, and on 30 July 2014 Clear Channel Estonia OÜ and JCDecaux Eesti OÜ, filed **claims for a refund** of advertising tax paid, along with interest, on the grounds that § 10 of the Local Taxes Act (LTA), which lays down the right of local authorities to establish advertising tax, fails to specify the essential elements of advertising tax and contravenes § 113 of the Constitution. By decisions No 3-5/3-5/959/2014 and 3-5-/958/2014 of 29 August 2014, Pärnu City Government dismissed the claim by the claimant companies because a local authority has no competence to set aside a legislative act of general application.

3. JCDecaux Eesti OÜ, Clear Channel Estonia OÜ, Neste Eesti AS and Selver AS lodged a joint **action** with Tallinn Administrative Court, seeking annulment of the Pärnu City Government decision of 29 August 2014

and the issuing of a precept for immediate refund of the excess payment. The applicants noted that § 10(2), (4) and (5) of the LTA contravene §§ 3 and 113 of the Constitution, as essential components of tax liability must be specified in a statute, including the minimum and maximum tax rate. The applicants also expressed the opinion that § 10 of the LTA also contravenes the Constitution in substantive terms, as lack of specificity of the object of taxation has led to a situation where many local authorities tax advertisements and notices to a very different degree, so that the regulatory scheme is not compatible with the principle of specificity and hampers free movement of goods and services. Under the State Liability Act, the applicants claimed interest for the period starting from payment of advertising tax and ending with the date when a refund of the excess payment should have taken place.

4. By **judgment** of 20 May 2015, Tallinn Administrative Court dismissed the action. The court reached the opinion that § 113 of the Constitution only applies to national taxes, while establishment of local taxes is regulated by § 157(2) of the Constitution, and in the case of establishing a tax by a legal act of a municipal council the elements of a tax law relationship cannot be specified in a statute. The competence of a municipal council cannot be limited merely to a decision on whether to establish a tax, as this would disproportionately circumscribe the right of self-organisation laid down in § 154 of the Constitution. In the case of advertising tax, the object of taxation is specified in § 2 of the Advertising Act. As regards establishing the tax rate, the discretion of a municipal council is also not unlimited, as in any case the principles of equal treatment, proportionality, legal certainty, and the welfare state must be taken into account, while privacy and freedom of enterprise must also be respected. The applicants have not asserted that the Pärnu City advertising tax is disproportionate. As the court does not carry out abstract constitutional review of legislation, arguments as to how advertising tax has been regulated in another rural municipality or city are also not relevant.

5. The applicants lodged an **appeal** seeking to annul the Tallinn Administrative Court judgment of 20 May 2015 and grant their action.

6. By **judgment** of 30 March 2016, Tallinn Court of Appeal dismissed the appeal and upheld the Administrative Court judgment. In the opinion of the Court of Appeal, the aim of § 113 of the Constitution – to establish all the elements of a tax law relationship in a statute – is impossible to achieve in the case of a local tax. In the case of a tax to be established by a local authority, only the bases for establishing such a tax can be specified. The aim of § 113 and § 157(2) of the Constitution cannot be to create a situation where the bases for payment of a local tax are exhaustively laid down in a statute and a municipal council can only choose whether or not the respective tax will have to be paid in the particular local authority. Tax liability can be equally clearly established in a legislative act in the form of either a statute or a regulation. The Court of Appeal also found that, in view of § 10(1) of the LTA also enabling taxation of notices in addition to advertisements, when establishing the object of taxation a local authority need not rely only on the Advertising Act, whereas the object of taxation is nevertheless sufficiently clearly identifiable.

7. JCDecaux Eesti OÜ, Clear Channel Estonia OÜ, Neste Eesti AS and Selver AS lodged an **appeal in cassation** against the Court of Appeal judgment, seeking to reverse the judgments of the Administrative Court and of the Court of Appeal and to enter a new judgment in the case by which their action should be granted. The appellants in cassation expressed the following positions.

7.1. Local tax is a public financial obligation subject to § 113 of the Constitution. The Supreme Court *en banc*

in case No 3-4-1-10-00 explained that the scope of protection of § 113 of the Constitution includes all public financial obligations, irrespective of how these are designated in different pieces of legislation. The aim of § 113 of the Constitution is to achieve a situation where all public financial obligations are established only by a legislative act in the form of a statute adopted by the Riigikogu. Thus the requirement of a statutory reservation also extends to all public financial obligations. The opinion of the Court of Appeal that tax liability can be equally clearly laid down in a legislative act in the form of either a statute or a regulation is arbitrary.

7.2. In the case of a local tax, the requirement of a legal basis cannot be fulfilled by merely listing a tax in the Local Taxes Act. From the point of view of a bearer of fundamental rights it is necessary that a statute should specify all the essential components of a tax law relationship. In a recent ruling in case No 3-4-1-34-14, the Supreme Court found with regard to establishment of public financial obligations delegated to local authorities under the Waste Act that it was constitutional if in line with § 113 of the Constitution all the elements of a public financial obligation are specified in the Act, and delegation of decision-making to the executive in respect of individual elements is not allowed. Thus, the special statutory reservation in establishing local taxes arises from § 113 of the Constitution and not from § 157(2) of the Constitution. A solution where § 113 of the Constitution is selectively applied to local public financial obligations is not logical.

7.3. The conclusion by the Court of Appeal that applying § 113 of the Constitution to local taxes would disproportionately restrict local authorities' right of self-organisation is erroneous. The main substance of the right of self-organisation includes the discretion of local authorities with regard to decisions and choices concerning local matters. Local matters are those which arise from and are concerned with the local community and have not been assigned within the competence of a state authority under the Constitution. The requirement of establishing a legal basis under the Constitution is not a local but a state-level matter. The requirement that restrictions on ownership may only be imposed by a formal statute or on the basis of a proper delegating norm contained in a statute has been established for the purpose that uniform criteria throughout the country should be observed when imposing restrictions on ownership. If protection of ownership were guaranteed unevenly in different areas of the country, it would be contrary to the principle of equal treatment and uniformity. Laying down the essential elements of a tax law relationship in a statute would not restrict opportunities to decide local matters, as local authorities maintain the right to decide whether to establish a tax. Establishing a basis for restricting fundamental rights is not a local matter.

8. The respondent in its **reply to the appeal in cassation** was of the opinion that the regulatory scheme for local taxes laid down in the Local Taxes Act complies with the Constitution.

ORDER OF THE SUPREME COURT ADMINISTRATIVE LAW CHAMBER

9. The Supreme Court Administrative Law Chamber found that, in the case of JCDecaux Eesti OÜ, Clear Channel Estonia OÜ and Neste Eesti AS, advertising tax was calculated on the basis of information submitted in tax returns and thus Pärnu City Government drew up tax notices to them, which does not prevent claiming a refund as set out in § 33(1) of the Taxation Act, and if § 10(2) or (4) of the LTA are unconstitutional they are entitled to reclaim advertising tax paid, observing the three-year time limit laid

down in § 33(4) of the Taxation Act. However, Selver AS did not file any tax returns and advertising tax was imposed on the basis of notices of assessment issued under § 4(5) of Pärnu City Council regulation No 43 of 16 December 2010 “Establishment of advertising tax” (hereinafter ‘regulation No 43’), which Selver AS did not contest, nor did it submit a claim for a refund within the time limit for contesting the notices. Thus, § 101(2) of the Taxation Act precludes the claim for refund submitted by Selver AS, regardless of the constitutionality of § 10 of the LTA.

10. The concept of advertising which is the object of advertising tax has been defined in the Advertising Act, as the Chamber emphasised in case No 3-3-1-7-16. A municipal council can only choose whether and what advertising in which area to tax. Therefore, the object of advertising tax is sufficiently specified, regardless of whether § 113 of the Constitution applies to advertising tax in the same way as to other public financial obligations.

11. Section 10 of the LTA does not lay down the tax rate, the criteria for setting it, or the minimum or maximum rate. The Supreme Court Constitutional Review Chamber and the Court *en banc* have consistently expressed the opinion that in the case of a financial obligation falling within the scope of protection of § 113 of the Constitution at least its minimum or maximum rate or the basis for calculating it must be specified in a statute. Thus, in adjudicating the case it is of decisive importance whether § 113 applies to advertising tax as a local tax with the same implications as to other public financial obligations. It is evident from the jurisprudence of the Supreme Court *en banc* (judgment in case No 3-4-1-10-00, para. 20, and judgment in case No 3-2-1-71-14, paras 91 and 96–97) that any public financial obligation has been considered as falling within the scope of protection of § 113 of the Constitution. Section 157(2) of the Constitution allows establishment of a local tax on the basis of a statute, without specifying which elements of the tax must be established in a statute.

12. The Administrative Law Chamber found that based on the positions of the Supreme Court *en banc* and the Constitutional Review Chamber to date a doubt arises that § 10(4) of the LTA may contravene § 113 of the Constitution to the extent that it allows a municipal council to set the rate of advertising tax, without laying down the minimum and maximum rate or other criteria serving as a basis for setting the tax rate. However, neither the Court *en banc* nor the Constitutional Review Chamber have ever expressed a position on the applicability of § 113 of the Constitution to local taxes or explained the relationship between § 113 and § 157(2) of the Constitution. In the opinion of the Administrative Law Chamber this is necessary to ensure uniform application of § 157(2) of the Constitution in the future. Therefore, under § 228(1) cl. 2) of the Code of Administrative Court Procedure the Chamber referred the case for adjudication to the Supreme Court *en banc*. At the same time, the Chamber noted that establishing the maximum rate of a local tax in a statute may be necessary in line with the principle of essentiality if the tax may result in a particularly serious interference with rights. In the case of advertising tax, the Administrative law Chamber does not see this danger, and thus establishing a maximum rate in a statute might not be necessary.

OPINIONS OF PARTICIPANTS IN THE PROCEEDINGS

13. – 26. [Not translated].

CONTESTED PROVISION

27. Local Taxes Act, § 10 „Advertising tax“, subsection (4):

„(4) The rate or differentiated rates of advertising tax are established by the council.“

Pärnu City Council regulation No 43 of 16 December 2010 „Establishment of the advertising tax“, § 3 „Tax rates“, subsection (1):

„(1) The tax rate for one square metre of advertising space a month is 11.50 euros.“

OPINION OF THE COURT*EN BANC*

28. The Court *en banc* will first assess which provisions need to be applied in adjudicating the case (I). Then it will deal with the requirements of form set by the Constitution for establishing a local tax (II), and will assess the constitutionality of § 10 of the LTA. Finally, the Court *en banc* will resolve the appeal in cassation (IV).

I

29. Advertising tax is a local tax laid down in the Local Taxes Act (§ 5(5) and § 10 LTA). A municipal council may establish advertising tax by a regulation (§ 2(1) (first sentence) LTA). Under § 10(4) of the LTA, a local authority is entitled to establish the rate of advertising tax. By regulation No 43, Pärnu City Council established the obligation to pay advertising tax within the administrative boundaries of Pärnu City. According to § 3(1) of the regulation, the tax rate for one square metre of advertising space in Pärnu City is 11 euros and 50 cents a month.

30. The appellants are legal persons in private law who in the period from 1 June 2011 to 1 July 2014 (Neste Eesti AS and Selver AS) and from 1 July 2011 to 31 July 2014 (JCDecaux Eesti OÜ and Clear Channel Estonia OÜ) published advertisements on advertising space located within the administrative boundaries of Pärnu City.

31. JCDecaux Eesti OÜ, Clear Channel Estonia OÜ and Neste Eesti AS submitted to Pärnu City tax returns with regard to publishing advertisements, based on which the city calculated the amount of tax to be paid and sent tax notices to the appellants, based on which the above appellants paid advertising tax. Selver AS did not submit tax returns to Pärnu City Government, and thus the city government imposed tax by notices of assessment, based on which Selver AS paid advertising tax. There is no dispute in the instant case concerning the fact that Pärnu City Government based its tax calculations on the tax rate laid down in § 3(1) of regulation No 43.

32. Under § 33(1) of the Taxation Act, JCDecaux Eesti OÜ and Clear Channel Estonia OÜ as well as Neste Eesti AS and Selver AS filed claims with Pärnu City Government for a refund of advertising tax paid, on the grounds that establishing the tax rate was contrary to the Constitution.

33. Under § 152(1) of the Constitution, when determining a case, the courts set aside a law or other legislation that is in conflict with the Constitution. According to subsection two of the same section, the Supreme Court declares invalid any law or other legislation that is in conflict with the Constitution.

34. When adjudicating the appeal by JCDecaux Eesti OÜ, Clear Channel Estonia OÜ and Neste Eesti AS, it is necessary to assess whether advertising tax for the appellant was lawfully assessed. Whether the appeal by JCDecaux Eesti OÜ, Clear Channel Estonia OÜ and Neste Eesti AS should be allowed or not depends on the validity of § 10(4) of the LTA. If the Court *en banc* repeals § 10(4) of the LTA, then § 3(1) of regulation No 43 should also be repealed, as in that case no legal basis would exist for establishing the tax rate. In that case advertising tax paid under § 3(1) of regulation No 43 should be refunded to the appellants because claims for a refund were filed within the limitation period laid down in § 33(4) of the Taxation Act.

35. Under 101(2) of the Taxation Act, at the request of a taxable person, a notice of assessment may be annulled in order to reduce tax liability only if the application for annulment of the notice of assessment is submitted within the time limit prescribed for contesting the notice of assessment or if a time limit which has expired is restored. Selver AS failed to contest the notices of assessment or to submit a claim for refund within the time limit for contesting a notice of assessment. Thus, § 101(2) of the Taxation Act precludes granting the claim for refund and allowing the appeal in respect of Selver AS, regardless of the constitutionality of § 10 of the LTA.

II

36. The Constitution only allows restrictions on rights and freedoms if a restriction formally and substantively complies with the Constitution. In accordance with the requirement of formal constitutionality, a legislative act that restricts fundamental freedoms must comply with the requirements of competence, procedure, and form, as well as the principles of legal clarity and general statutory reservation (cf. Supreme Court *en banc* judgment of 26 April 2016 in case No 3-2-1-40-15, para. 40).

37. There is no dispute in the instant case that both Pärnu City Council regulation No 43 as well as the Local Taxes Act were adopted in compliance with the requirements of competence, procedure, and form. However, the appellants contend that § 10(4) of the LTA, which entitles a municipal council to establish the rate of advertising tax, is contrary to § 113 of the Constitution. Additionally, the appellants assert that delegating establishment of the rate of advertising tax and partially also of the object of taxation to a municipal council is contrary to the principle of legal clarity.

38. Under § 3(1) (first sentence) of the Constitution, governmental authority is exercised solely pursuant to the Constitution and laws in conformity therewith. This provision reflects the principle of the general statutory reservation which allows restriction of fundamental rights only on a lawful basis. In doing so, it should be taken into account that in a democratic country all decisions having significance in terms of the exercise of fundamental rights must be made by the legislator. Nonetheless, less intense restrictions of fundamental rights may be imposed by a regulation issued on the basis of a delegating provision that is precise, clear, and corresponds to the intensity of the restriction (Supreme Court *en banc* judgment of 3 December 2007 in case No 3-3-1-41-06, paras 21 and 22). Thus, the more intense the interference with fundamental rights as a consequence of a measure laid down in a statute, the more detailed the statute must be.

39. The principle of general statutory reservation is also expressed in § 113 of the Constitution, under which national taxes, encumbrances, fees, fines and compulsory insurance payments are established by statute. The Supreme Court has found that the aim of § 113 is to achieve a situation where all public financial obligations are established only by a legislative act in the form of a statute adopted by the Riigikogu (see the Supreme Court *en banc* judgment of 22 December 2000 in case No 3-4-1-10-00, para. 20).

40. In the case of a national tax, § 113 of the Constitution requires that all the elements of a tax law relationship (taxpayer, object of taxation, tax rate, tax recipient, procedure and term for payment of tax) be established in a statute, as the rights and duties of the taxpayer must follow directly from a tax statute (Supreme Court Constitutional Review Chamber judgment of 26 November 2007 in case No 3-4-1-18-07, para. 24). The Supreme Court has acknowledged that the rate of a national tax may also be laid down in a statute as a maximum and minimum rate, but the minimum rate may not be zero (Supreme Court Constitutional Review Chamber judgment of 23 March 1998 in case No 3-4-1-2-98, sections V and VII).

41. Apart from guiding the behaviour of taxpayers, the aim of a tax is first and foremost to generate revenue for the tax recipient and, unlike for example a fee, a tax does not include a direct counter-performance for the benefit of the payer (see Supreme Court Constitutional Review Chamber judgment of 23 March 1998 in case No 3-4-1-2-98, as well as § 2 Taxation Act). Judicial review of the substantive constitutionality (first and foremost the proportionality) of interference with fundamental rights as a result of tax liability is therefore limited. Thus, it is important that the elements of tax liability should be established by a democratically legitimised body.

42. The main issue in the instant case is whether establishing local taxes should proceed from § 157(2) of the Constitution, under which local authorities may, on the basis of a statute, establish and levy taxes, and

impose encumbrances, or whether the yardstick should be § 113 of the Constitution. As the dispute in the instant case involves the constitutionality of establishing a local tax, the Court *en banc* will not deal with the requirements for establishing other public financial obligations.

43. Systematic interpretation of the Constitution speaks in favour of relying on § 157(2) of the Constitution when establishing local taxes. Section 113 is contained in Chapter VIII, which stipulates the principles concerning national finance and the national budget. Section 157 of the Constitution, on the other hand, is contained in Chapter XIV of the Constitution stipulating the constitutional foundations of local self-government. When interpreting competing constitutional provisions, preference should as a rule be given to a provision that more specifically regulates a legal relationship.

44. Section 157(2) of the Constitution allows a local authority to establish taxes only on the basis of a statute, without specifying to what extent local taxes must be established in a taxation statute. Similarly to § 113 of the Constitution, the requirement of a legal basis for § 157(2) of the Constitution is the expression of the general statutory reservation laid down in § 3(1) (first sentence) of the Constitution, and its application must take into account, inter alia, the significance of the issues regulated. At the same time, the formal constitutional requirements for establishing local taxes may differ from the requirements for national taxes. A municipal council is a democratically legitimised body whom the electorate of a local authority has empowered to decide local matters.

45. Similarly to the right to an independent budget ensured under § 157(1) of the Constitution, the right to establish taxes ensured under § 157(2) of the Constitution is also one of the financial guarantees of local authorities with the aim of ensuring sufficient financial resources for local authorities. The right to autonomously decide and administer all local matters (local authorities' right of self-organisation) ensured under § 154(1) of the Constitution can be exercised by a local authority if it has sufficient funds to do so (see the Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09, para. 55). The right of local authorities to establish taxes is also recognised by the European Charter of Local Self-Government, Article 9 para. 3 of which states that part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate. The charge in this paragraph of the Charter is not understood as an encumbrance within the meaning of § 36(2) of the Local Government Organisation Act (performance of mandatory work).

46. Section 157(2) of the Constitution allows local authorities to establish only taxes which the legislator has laid down in a taxation statute, but they may decide whether or not to establish a particular tax. Thus, the list of local taxes and the conditions for establishing them are laid down in the Local Taxes Act (§ 3(1) and (3) Taxation Act). A rural municipal or city council may by regulation establish within its administrative boundaries a tax listed in a statute (§ 2(1) (first sentence) LTA). A tax law relationship between a local authority and a taxpayer can arise only after the council regulation is established.

47. The requirement of a legal basis as laid down in § 157(2) of the Constitution is not exhausted merely by listing a tax in a taxation statute. The Court *en banc* finds that a taxation statute must lay down the object of a local tax, the taxpayer, and the tax recipient. The object of a tax and the taxpayer are essential constituent elements of a legal rule regulating a tax law relationship, and laying them down in a statute is necessary for protection of fundamental rights. Laying down the object of a local tax in a statute also helps to prevent uncontrolled cumulation of taxes.

48. A taxation statute must also lay down the recipient of a local tax, as the issue of who will collect the tax concerns division of competences between the state and local authorities. However, this requirement must not be understood as ruling out specifying the competence to collect a local tax within a local authority itself or concluding an administrative contract for collecting the tax if that possibility is enabled under a statute. Within their administrative boundaries rural municipality or city governments or other rural municipality or city agencies stipulated in a tax regulation are the collectors, i.e. tax authorities for local taxes, which organise collection of local taxes (§ 3(1) LTA).

49. A tax rate is not a precondition for applying a tax law provision, but relates to the legal consequence of the provision. Failure to lay down the maximum tax rate in a statute does not cause the risk of a local authority starting to tax situations with regard to which the statute has not granted it the right of taxation. The issue here only relates to the extent of the obligation. Therefore, the Court *en banc* finds that § 157(2) of the Constitution allows the rate of a local tax to be left for a municipal council to decide, unless the principle of essentiality requires that the legislator lay down the tax rate in the case of a specific type of tax.

50. In the opinion of the Court *en banc*, a taxation statute need not lay down the procedure and term for payment of a local tax or exemption from the tax. The procedure and term for payment of a tax are organisational issues not related to the need to guarantee fundamental rights, and a tax exemption is favourable to a taxpayer. However, the legislator may consider regulating these issues in a statute. This might be advisable in order to simplify the activities of businesses displaying advertisements throughout the country.

III

51. The Court *en banc* will assess the constitutionality of § 10 of the LTA to the extent relevant for the instant case.

52. Under § 4(3) of the Taxation Act, a taxation statute must lay down the name of a tax, object of taxation, tax rate, taxpayers, recipient of or place of receipt of a tax, due date or term for payment of tax, and in the case of periodic taxes the taxation period, the procedure for calculation and payment of the tax as well as supplementary obligations accompanying the tax, and available tax incentives. The provisions of the Taxation Act apply to local taxes insofar as the Local Taxes Act does not provide otherwise (§ 1(4) Taxation Act).

53. Under § 10(1) of the LTA, advertising tax is paid by natural and legal persons for notices and advertisements posted within the boundaries of the local authority, and on public transport vehicles registered as belonging to natural persons who reside or legal persons whose registered office is located within the boundaries of the local authority.

54. The Local Taxes Act does not stipulate what should be understood by an advertisement or a notice. The concept of advertisements subject to advertising tax is specified in the Advertising Act, and a local authority may not tax as advertisements any objects not defined as advertising in the Advertising Act (Supreme Court Constitutional Review Chamber judgment of 9 June 2016 in case No 3-3-1-7-16, para. 10). Section 2(1) clause 3) of the Advertising Act lays down the statutory definition of advertising, according to which advertising means information which is made public in any generally perceived form for a charge or without charge for the purpose of increasing the provision of services or the sale of goods, promoting an event or directing the conduct of a person in public interests. Objects not deemed to be advertising within the meaning of the Advertising Act have been laid down in § 2(2) of the Advertising Act. The concept of a notice is not laid down either in the Local Taxes Act or the Advertising Act, but in the instant case § 10(1) of the LTA has no relevance in terms of taxation of notices..

55. Posting of advertising should not be understood in the narrow sense as merely putting it up but as publicising, i.e. public display, of advertising within the meaning of § 2(1) cl. 4) of the Advertising Act. Thus, it may be concluded from § 10(1) of the LTA that a local authority can tax advertising only if advertising is publicised within the administrative boundaries of the local authority.

56. In accordance with § 10(1) of the LTA, advertising tax is paid by natural and legal persons. If posting of advertising is understood as its public display, payers of advertising tax are natural and legal persons who publicly display advertising within the meaning of § 2(1) cl. 4) of the Advertising Act. In the instant case, there is no dispute over the fact that the appellants posted advertising.

57. Based on the foregoing, the Court *en banc* is of the opinion that the object of advertising tax and the taxpayer have been clearly specified in a statute to the relevant extent. The fact that § 10(2) of the LTA entitles municipal councils to establish a list of notices and advertisements subject to taxation, as well as a list of places where they are posted, does not lead to the opposite conclusion. Section 10(2) of the LTA allows local authorities themselves to define the object of advertising tax within the frame set by law.

58. The Local Taxes Act does not lay down the rate of advertising tax, the criteria for setting it, or the minimum or maximum rate of advertising tax. Section 10 (4) of the LTA leaves the rate or differentiated rates of advertising tax for a city or rural municipal council to establish.

59. The Court *en banc* finds that the Constitution does not require that the rate of the advertising tax, including the maximum or minimum rate, be laid down in a statute, as interference with fundamental rights as a result of advertising tax is not intense. If a local authority establishes a rate of advertising tax which is too high, the taxpayer may stop posting advertisements there without it harming their essential legal interests. Advertising can then be publicised in other local authorities or by using other modes for publicising advertising.

60. The rates of advertising tax established by Pärnu City Council regulation No 43 contested in the instant case are not high. The rate of advertising tax for one square metre of advertising space is 11 euros and 50 cents a month (§ 3(1) of regulation No 43). The tax rate for advertising displayed on public transport

vehicles is 76 euros a month for a whole public transport vehicle and 45 euros a month for one side of advertising (§ 3(2) of regulation No 43). In the case of non-stationary advertising, the tax rate is 6 euros and 39 cents a month for one advertising medium (§ 3(3) of regulation No 43). Advertising posted on a privately owned building or immovable property is taxable at a 50% tax rate (§ 3(5) of regulation No 43).

61. The Court *en banc* acknowledges that differences in the object and rate of advertising tax in local authorities might somewhat complicate the business activities of entities posting advertising throughout the country, but this does not deprive the tax elements laid down by the statute of their legal clarity.

62. Based on the foregoing, the Court *en banc* holds that § 10(4) of the LTA is not contrary to § 157(2) of the Constitution, and the elements of the advertising tax have not been laid down without legal clarity.

IV

63. Within the proceedings, the appellants have alleged only a conflict of the regulatory scheme of advertising tax with the Constitution. The Court *en banc* did not find conflict of § 10(4) of the LTA or Pärnu City Council regulation No 43 with the Constitution. No other circumstances for repealing Pärnu City Government decisions of 29 August 2014 in the instant case could be found either. Therefore, granting the requests to order execution is precluded.

64. Within the cassation proceedings, Selver AS has expressed the view that the respondent and the courts have acted misleadingly, as even at the time of adjudicating the claim for refund it should have been explained that the amounts of advertising tax had been determined by notices of assessment which had entered into force. Selver AS was also given no opportunity to amend the appeal or restore the time limit.

65. The Court *en banc* does not agree with this criticism. The time limit for contesting notices of tax assessment is clearly regulated. By failing to contest a notice of assessment in time, the appellant conceded that the obligations specified in the notice of assessment must be complied with, regardless of the lawfulness of the notice of assessment. Moreover, the constitutionality of the contested legal rules also precludes allowing the appeal by Selver AS.

66. Based on the foregoing, the Court *en banc* dismisses the appeal in cassation and upholds the judgment of the Court of Appeal.

67. As the appeal in cassation is dismissed, under § 108(1) of the Code of Administrative Court Procedure the procedural expenses of the appellants are to be borne by themselves. The securities will be appropriated to government receipts. The respondent has not requested an award of procedural expenses.
