

**JUDGMENT  
OF THE GENERAL ASSEMBLY  
OF THE SUPREME COURT**

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| <b>No. of the case</b>                            | 3-3-1-15-07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Date of judgment</b>                           | 1 February 2008                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Composition of court</b>                       | Chairman Märt Rask and members Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Lea Laarmaa, Julia Laffranque, Jaak Luik, Üri Põld, Harri Salmann and Tambet Tampuu.                                                                                                                                                                                                                                                                                                             |
| <b>Court Case</b>                                 | Action of Ülo Kalda for the compensation for damage caused by unjust deprivation of liberty.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Disputed judgment</b>                          | Judgment of Tallinn Circuit Court of 17 November 2006 in administrative matter no 3-05-119.                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Ground for proceeding in the Supreme Court</b> | Appeal in cassation of Ülo Kalda.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Date of hearing</b>                            | 16 October 2007.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>DECISION</b>                                   | <p><b>1. To satisfy the appeal in cassation of Ülo Kalda.</b></p> <p><b>2. To annul the Tallinn Circuit Court judgment of 17 November 2006 in administrative matter no 3-05-119 and the Tallinn Administrative Court judgment of 16 June 2006 in administrative matter no 3-05-119, and to render a new judgment in the matter.</b></p> <p><b>3. To satisfy the action of Ülo Kalda. To order the payment of 103 880 kroons from state budget to Ülo Kalda for the damage caused by unjust deprivation of liberty.</b></p> <p><b>4. To refund the security.</b></p> |

**FACTS AND COURSE OF PROCEEDING**

1. From 8 February until 14 November 2001 Ülo Kalda was held in custody as a person suspected of a criminal offence. On 15 April 2004 the Tallinn City Court convicted Ü. Kalda in criminal case no 1 2410/03, and punished him by imprisonment of 8 months and 10 days. On 6 October, in criminal case no 2 1/519/04, the Tallinn Circuit Court annulled the judgment of the Tallinn City Court and acquitted Ü. Kalda. On 30 December 2004 Ü. Kalda filed an application with the Ministry of Finance for the compensation for damage caused by unjust deprivation of liberty.

2. The Tallinn Circuit Court did not from an opinion in the acquitting judgment on whether the damage caused to Ü. Kalda by unjust deprivation of liberty must be compensated for or not. On 10 January 2005 the Ministry of Finance sent an inquiry to the Tallinn Circuit Court, requesting that the court submit to it the ruling required by § 2(2) of the Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act (hereinafter "the CUDLA"). The Ministry of Finance pointed out that pursuant to § 2(2) of the CUDLA the court must indicate in the judgment the number of days during which the person was unjustly deprived of liberty. If, on the basis of § 1(3) of the CUDLA, the person need not be compensated for the damage caused by unjust deprivation of liberty, the court shall indicate it in the judgment or ruling.

3. On 20 January 2005 the Tallinn Circuit Court replied to the ministry by letter no 2 1/519/04, in which the court held that proceeding from § 1(3)1) of the CUDLA, Ü. Kalda was not entitled to receive compensation for the damage caused by unjust deprivation of liberty. It appears from the documents of the criminal case that Ü. Kalda had ignored the summonses to appear before preliminary investigator during the pre-trial investigation and that he had been taken into custody due to absconding pre-trial criminal proceeding. The Tallinn Circuit Court argued that the court had acted correctly by not expressing its opinion in the judgment of 6 October 2004 on the compensation to Ü. Kalda for the time spent in custody, and that there was no ground for issuing the ruling provided in § 2(2) of the CUDLA.

4. In its letter no 4 4/37 of 31 January 2005 the Ministry of Finance informed Ü. Kalda that his application for the compensation for damage caused by unjust deprivation of liberty could not be satisfied. In the refusal the ministry referred to the Tallinn Circuit Court letter of 20 January 2005, and explained that pursuant to § 1(3)2) of the CUDLA persons who absconded proceedings or pre-trial proceedings regarding a criminal matter shall not be compensated for damage.

5. On 28 February 2005 Ü. Kalda filed an action with the Tallinn Administrative Court, applying for the annulment of the Ministry of Finance letter of 31 January 2005 as administrative legislation, and for requesting the ministry to issue new administrative legislation. On 30 June 2005 Ü. Kalda amended the object of action, requesting under § 4(6) of the CUDLA that the administrative court order the payment of compensation for damage caused by unjust deprivation of liberty.

6. The Ministry of Finance argued that Ü. Kalda's application should be denied. The ministry based its decision on the Tallinn Circuit Court letter of 20 January 2005, because it is a court, a prosecutor or a preliminary investigator who decides on the compensation for damage caused by unjust deprivation of liberty in criminal proceedings. The Ministry of Finance can not decide on the substance of an application; the duty of the ministry is to exercise formal control. The ministry added that if the court shall order the payment of compensation to Ü. Kalda, the amount thereof should be 103 880 kroons.

7. On 16 June 2006, by its judgment in administrative matter no 3 05 119, the Tallinn Administrative Court satisfied the action of Ü. Kalda and ordered the payment of 103 880 kroons to Ü. Kalda as compensation for damage caused by unjust deprivation of liberty. The administrative court found that the Tallinn Circuit Court letter of 20 January was not binding, because it did not meet the requirements provided in § 2(2) of the CUDLA – the decision on compensation or refusal of compensation can not be made by a letter. Proceeding from the principles of procedural economy and guarantee of effective protection of persons' rights, and from §§ 14 and 15 of the Constitution, the administrative court heard the claim for damage on its merits. On the basis of the documents of the criminal file and the evidence examined at the court session, the administrative court concluded that Ü. Kalda had not intentionally absconded pre-trial proceedings.

8. The Ministry of Finance filed an appeal against the Tallinn Administrative Court judgment. The Ministry did not agree with the opinion of the administrative court that Ü. Kalda had not absconded pre-trial proceedings.
9. By its judgment of 17 November 2006 in administrative matter no 3 05 119 the Tallinn Circuit Court annulled conclusion 1 of the Tallinn Administrative Court judgment and rendered a new judgment, not satisfying the action of Ü. Kalda. The circuit court argued that the allegations of the complainant and the evidence he referred to do not refute the opinion of the Ministry of Finance that the complainant himself gave reason for his taking into custody by his behaviour, as he had absconded the pre-trial proceedings during several months. In such a case § 1(3)2 of the CUDLA excludes the compensation for damage, and consequently the refusal of the Ministry of Finance did not violate the rights of the complainant.
10. Ü. Kalda filed an appeal in cassation against the Tallinn Circuit Court judgment with the Supreme Court. The appellant in cassation is of the opinion that the Tallinn Circuit Court had re-evaluated the evidence on which the Tallinn Administrative Court judgment had been based, failing to justify why the evidence should be evaluated differently, and thus violated the obligation provided in § 653 of the Code of Civil Procedure (hereinafter "the CCP").
11. The Ministry of Finance argued that the Tallinn Circuit Court judgment of 17 November 2006 was legal and justified, and requested that the appeal in cassation be not satisfied.
12. On the basis of § 70(1<sup>1</sup>) of the Code of Administrative Court Procedure, by ruling of 11 July 2007, the Administrative Law Chamber of the Supreme Court transferred case no 3 3 1 15 07 to the general assembly of the Supreme Court for a hearing. The Administrative Law Chamber was of the opinion that it should be controlled whether the restrictions on the compensation for damage provided in § 1(3) of the CUDLA, especially in clause 2) of the provision, were in conformity with the principle of proportionality established in § 11 of the Constitution, and with the principle of equality established in § 12 of the Constitution.
13. Under § 10 of the Constitutional Review Court Procedure Act the Supreme Court involved the following as participants in the proceeding before the general assembly: the Riigikogu, the Chancellor of Justice and the Minister of Justice; and requested that they submit their written opinions on the constitutionality of § 1(3) of the CUDLA.
14. The general assembly heard the matter at its oral hearing on 16 October 2007.

#### **OPINIONS OF THE CHAMBER AND THE PARTICIPANTS IN THE PROCEEDING**

15. The Administrative Law Chamber of the Supreme Court pointed out in its ruling that upon compensating for damage caused by unjust deprivation of liberty an administrative court must ascertain whether an acquitting judgment has been rendered in regard to complainant, whether this has entered into force and whether the acquitted person had been held in custody during the criminal proceedings with the permission of a court. An administrative court must check whether the requirement of § 314 6) of the Code of Criminal Procedure (hereinafter "the CCP"), pursuant to which the conclusion of a judgment of acquittal must set out the extent of the damage which the criminal proceeding has caused to the person acquitted, is fulfilled. In the cases when the requirements provided in § 314 6) of the CCP are fulfilled, an administrative court has no competence to analyse, in competition of a court of general jurisdiction, the substantial conditions of granting or refusal to grant compensation for damage caused by unjust deprivation of liberty. On the other hand, if the requirements established in § 314 6) of the CCP are not fulfilled, an administrative court, proceeding from the consideration of procedural economy and by way of exception, is competent to hear on the merits also such issues related to compensation for the damage under discussion, which are normally in the competence of the courts of general jurisdiction.
16. The Administrative Law Chamber of the Supreme Court argued that the administrative court had correctly established that upon the acquittal of Ü. Kalda the provisions of § 314 6) of the CCP had not been observed, and that the Tallinn Circuit Court letter of 20 January 2005 could not be regarded as a procedural document duly determining the grant or refusal to grant compensation for damage to Ü. Kalda.
17. The Administrative Law Chamber pointed out that the CUDLA regards the cases when a judgment of acquittal of a person has entered into force, as unjust deprivation of liberty and, consequently, also as cases of damage. At the same time, § 1(3)1) of the CUDLA established a restriction on the compensation for damage, excluding the compensation for damage to a person who has absconded pre-trial proceedings. In the case of a judgment of acquittal a person must be placed in a position which is as close as possible to the situation where the person would be if no criminal proceeding had been initiated against him and no coercive measures had been applied to him. This can be achieved primarily by compensating for damage, for the refusal of which there must be convincing constitutional justifications.
18. At the hearing Ü. Kalda and his representative adhered to the opinions expressed in the appeal in cassation. The representative of Ü. Kalda argued that § 1(3)2) of the CUDLA was unconstitutional. The representative requested that the court order the payment of Ü. Kalda's legal assistance costs of 3685 kroons.
19. The Minister of Finance argued that deprivation of liberty because of abscondence of criminal proceedings can not be regarded as unjust and the damage caused as unlawful, therefore § 1(3)2) of the CUDLA is not in conflict with the Constitution.
20. The Minister of Justice was of the opinion that the relevance of § 1(3) of the CUDLA depended on whether Ü. Kalda absconded criminal proceedings, but the provision was not in conflict with the Constitution.
21. The Chancellor of Justice argued in his written opinion that before the adjudication of the legal dispute it would not be possible to decide whether § 1(3)2) of the CUDLA was relevant. If the general assembly considers the provision relevant, the Chancellor of Justice finds the provision to be in conflict with the Constitution (with §§ 25 and 11 in their conjunction) to the extent that it automatically and completely excludes the compensation for damage, without permitting to consider the circumstances of each individual case. The Chancellor of Justice admitted that from the point of view of a person with average abilities, § 1(3)2) of the CUDLA may not meet the principle of legal clarity.
22. The Constitutional Committee and the Legal Affairs Committee of the Riigikogu argued in their written opinions that § 1(3) of the CUDLA was not unconstitutional.

#### **OPINION OF THE GENERAL ASSEMBLY**

23. The general assembly shall review the case transferred to it by the Administrative Law Chamber of the Supreme Court under § 70(1<sup>1</sup>) of the Code of Administrative Court Procedure. The general assembly acts on the basis of § 14(3) of the Constitutional Review Court Procedure Act, pursuant to which the general assembly shall adjudicate a case in regard to all relevant issues, applying the procedural laws according to the type of case and the Constitutional Review Court Procedure Act.

On the basis of the aforesaid the general assembly shall first adjudicate the legal dispute (I) and thereafter it shall form an opinion on the constitutional review issue (II).

## I.

**24.** Arrest is a measure for securing criminal proceedings, i.e. preventive measure, which most severely infringes liberty of person and presumption of innocence (see judgment of the Criminal Chamber of the Supreme Court of 11 December 2006 in case no 3 1 1 103 06, paragraph 10).

**25.** Pursuant to § 20(1) of the Constitution, everyone has the right to liberty and security of person. The second subsection of § 20 permits the deprivation of liberty, inter alia, to prevent a criminal offence, to bring a person who is reasonably suspected of such an offence before a competent state authority, or to prevent his or her escape. The liberty of person, guaranteed by § 20(1) of the Constitution, is a very important fundamental right. The Supreme Court has held that liberty is one of the most important fundamental rights (see the judgment of the Administrative Law Chamber of the Supreme Court of 9 June 2006 in matter no 3 3 1 20 06, paragraph 15).

**26.** § 22(1) of the Constitution establishes the presumption of innocence, which prohibits to presume anyone guilty of a criminal offence until a conviction by a court against the person enters into force. The requirement that no one has the duty to prove his or her innocence, established in the second paragraph of § 22 of the Constitution, is an element of presumption of innocence.

**27.** The general assembly points out that non-proprietary damage, incidental to arrest as an intense infringement of fundamental rights, is to be presumed. The Supreme Court has held that the inevitable sufferings and inconvenience are incidental to unjust deprivation of liberty, and there is no need to separately prove the moral damage caused by such deprivation of liberty (see the judgment of the Civil Chamber of the Supreme Court of 12 March 1998 in matter no 3 2 1 32 98).

**28.** The compensation for damage caused by deprivation of liberty is regulated by Compensation for Damage Caused by State to Person by Unjust Deprivation of Liberty Act, adopted in 1997. The referred Act regulates the compensation for damage caused by deprivation of liberty only in regard to loss of income and non-proprietary damage. The direct proprietary damage caused by deprivation of liberty is compensated for pursuant to the procedure established in the State Liability Act (§ 5(4) of the CUDLA).

**29.** Pursuant to § 1(1) of the CUDLA the state has an obligation to compensate for damage caused by unjust deprivation of liberty. The cases which are regarded as unjust deprivation of liberty for the purposes of the CUDLA, for which compensation for damage is provided, are enumerated in clauses 1 7 of § 1(1) of the CUDLA. According to § 1(1) of the CUDLA unjust deprivation of liberty occurs when a person was held in custody with the permission of a court and criminal proceedings in his matter were terminated at the stage of pre-trial investigation or in a preliminary hearing or when with regard to him a judgment of acquittal has entered into force. Consequently, in the case of termination of criminal proceedings or acquittal of a person § 1(1)1) of the CUDLA considers arrest as unjust deprivation of liberty irrespective of whether the arrest was in conformity with the norms of criminal procedure or not.

In the criminal case of Ü. Kalda the Tallinn Circuit Court rendered a judgment of acquittal, that is why the third alternative of § 1(1)1) of the CUDLA is of primary importance in the adjudication of the matter.

**30.** Compensation for damage caused by unjust deprivation of liberty is precluded in the cases enumerated in § 1(3) of the CUDLA. Damage shall not be compensated for to the persons who, in the course of examination or court hearing, caused the unjust deprivation of liberty by their false admission of guilt or other acts performed intentionally or due to gross negligence (§ 1(3)1) of the CUDLA). Neither shall damage be compensated for to persons who absconded proceedings or pre-trial proceedings regarding a criminal matter, violated the obligation arising from a preventive measure not to leave their residence without the permission of the corresponding official or court, escaped or were hiding (§ 1(3)2) of the CUDLA). Furthermore, compensation for damage is excluded in regard to persons regarding whom criminal proceedings were terminated on the basis of §§ 202 205 of the CCP on the consideration of purposefulness (§ 1(3)3) of the CUDLA).

**31.** Pursuant to § 314(6) of the CCP, the conclusion of a judgment of acquittal shall set out the extent of the damage which the criminal proceeding has caused to the person acquitted. The Tallinn Circuit Court adjudicated Ü. Kalda's criminal case at the time of transformation from the old Code of Criminal Procedure to the new one, which entered into force on 1 July 2004. The Tallinn Circuit Court rendered the judgment in Ü. Kalda's criminal case on 6 October 2004. Pursuant to § 2(1) of the Code of Criminal Procedure Implementation Act, the cases handed over to the courts before the new Code of Criminal Procedure entered into force, were to be heard by city and county courts pursuant to the old Code. § 276 of the old Code, which established the formal requirements to the conclusions of judgments on acquittal, did not provide for the obligation to set out the extent of the damage which the criminal proceeding has caused to the person acquitted.

**32.** The obligation to adjudicate, in the judgment of acquittal, the issue of compensation for damage caused by unjust deprivation of liberty, arises from § 2(2) of the CUDLA. Pursuant to the first sentence of § 2(2) of the CUDLA, a court and a prosecutor, preliminary investigator or another official who makes a judgment, decision, ruling or order set out in § 2(1) of the CUDLA shall indicate in the judgment, decision, ruling or order the number of days during which the person was unjustly deprived of liberty. If, on the basis of § 1(3) of the CUDLA, the person need not be compensated for the damage caused by unjust deprivation of liberty, the court, prosecutor or preliminary investigator shall indicate it in the judgment, decision, ruling or order.

**33.** On the basis of systematic interpretation of § 1(1) and (3), and § 2(2) of the CUDLA, the general assembly argues that even when compensation for damage is excluded on the basis of one of the clauses of § 1(3) of the CUDLA, still the damage has been caused to a person by unjust deprivation of liberty in the cases referred to in § 1(1) of the CUDLA. The fact that damage need not be compensated for does not mean that no damage was caused by unjust deprivation of liberty.

A judgment of acquittal must set out at least one of the facts referred to in § 2(2) of the CUDLA – the number of days during which the person was unjustly deprived of liberty, or the facts excluding the compensation for damage. If the judgment sets out the fact excluding the compensation for damage, the number of days during which the person was held in custody need not be set out.

**34.** The general assembly is of the opinion that according to the CUDLA the compensation for damage caused by unjust deprivation of liberty is excluded only when the judgment of acquittal sets out the fact excluding the compensation for damage. If the judgment of acquittal does not set out the fact excluding the compensation for damage, there is no ground to refuse and the damage must be compensated for.

**35.** Next, the general assembly shall examine the issue of payment of compensation for damage caused by unjust deprivation of liberty. An application for the compensation of damage caused by unjust deprivation of liberty shall be submitted to the Ministry of Finance. The ministry shall hear the application and shall either pay the compensation or decide to deny the application (§ 4(4) of the CUDLA), acting on the basis of the provisions of the CUDLA and the Administrative Procedure Act.

The ministry has a limited role upon compensation for damage, as it only verifies the authenticity of the documents submitted in order to receive compensation (the first sentence of § 4(3) of the CUDLA). When making its decision, the ministry must proceed from the circumstances established by a court (or other official) in the judgment (or ruling), serving as the basis for compensation for damage. The right to apply for compensation arises as of the date when a decision on annulment or amendment of a judgment of acquittal or judgment of conviction is made, when a ruling or order on the termination of proceedings enters into force or when a decision to release the person is made by an official (§ 2(1) of the CUDLA).

**36.** Consequently, the Ministry of Finance was to verify whether the Tallinn Circuit Court judgment of 6 October 2004, on the acquittal of Ü. Kalda, had entered into force and whether the judgment set out the number of days during which Ü. Kalda was unjustly deprived of liberty, or the fact excluding the compensation for damage. The Tallinn Circuit Court judgment of acquittal had entered into force by the time the application was submitted, but the judgment failed to set out neither of the circumstances referred to in § 2(2) of the CUDLA.

**37.** A solution to a situation where a court has failed to set out in its judgment of acquittal neither of the circumstances referred to in § 2(2) of the CUDLA, is provided in the second sentence of § 4(3) of the CUDLA. If a judgment, decision, ruling or order appended to an application does not specify the number of days during which the person was unjustly deprived of liberty, the Ministry of Finance shall apply for specification of the number of the days from the corresponding court or official.

**38.** The CUDLA does not specify in which form the court must determine the number of days during which a person was unjustly deprived of liberty; neither is the issue regulated by the CCP. The general assembly is of the opinion that the only suitable procedural document in this regard is a ruling for the purposes of § 145 of the CCP. § 431 of the CCP is to be applied as a procedural law basis for issuing a ruling; pursuant to this provision the doubts and ambiguities arising in the execution of a court decision shall be settled by a ruling of the court which made the decision or by the judge in charge of execution of court judgments at the county court enforcing the decision.

**39.** In the course of adjudicating the application of Ü. Kalda the Ministry of Finance addressed the Tallinn Circuit Court on the basis of § 4(3) of the CUDLA, and requested that the court issue a respective ruling. The Tallinn Circuit Court did not issue a ruling, instead it explained in its letter of 20 January 2005 that Ü. Kalda's compensation for damage was excluded because Ü. Kalda had absconded pre-trial criminal proceedings. On 31 January 2005, on the basis of the Tallinn Circuit Court letter of 20 January 2005, the Ministry of Finance refused to pay compensation to Ü. Kalda for damage caused by unjust deprivation of his liberty.

**40.** Ü. Kalda filed an appeal against the Ministry of Finance decision of 31 January 2005 with the Tallinn Administrative Court for the order of payment of compensation for damage caused by unjust deprivation of liberty. According to § 4(6) of the CUDLA, if an application for compensation is denied or is not reviewed, the person may file an action with an administrative court for the order of payment of compensation under the conditions provided by law. When reviewing the action referred to in § 4(6) of the CUDLA, an administrative court is entitled to decide on the payment of compensation instead of the Ministry of Finance. This constitutes an exception in regard to § 26(1) of the Code of Administrative Court Procedure, pursuant to which, upon adjudication of the merits of an action or protest, an administrative court has the right to annul an unlawful administrative act and, if necessary, issue a precept for the issue of an unissued administrative act.

**41.** The court who had rendered the judgment of acquittal in the criminal case had failed to set out in the judgment either of the circumstances referred to in § 2(2) of the CUDLA, yet the judgment had entered into force. The Ministry of Finance had availed itself of the possibility provided in the second sentence of § 4(3) of the CUDLA to address the court who had rendered the judgment, but this had not resolved the situation. That is why the Tallinn Administrative Court was forced, by way of exception, to adjudicate Ü. Kalda's application for compensation for damage caused by unjust deprivation of liberty.

**42.** By its judgment of 16 June 2006 the Tallinn Administrative Court ordered the payment of 103 880 kroons of compensation to Ü. Kalda for unjust deprivation of his liberty. The judgment of the administrative court was based on the principles of procedural economy and effective protection of persons' rights, and the court concluded, when evaluating evidence, that Ü. Kalda had not intentionally absconded the pre-trial proceedings.

The general assembly is of the opinion that by evaluating evidence in the process of adjudicating Ü. Kalda's action, the Tallinn Administrative Court exceeded its competence. Upon adjudicating Ü. Kalda's action the Tallinn Administrative Court should have proceeded from the fact that the Tallinn Circuit Court judgment of acquittal did not set out any facts excluding the compensation for damage. As the facts excluding compensation for damage had not been established, there was no ground for refusal to pay the compensation for damage. It is on this ground that the administrative court should have satisfied Ü. Kalda's action. The administrative court should not have tried to establish whether Ü. Kalda had absconded pre-trial criminal proceedings and whether compensation for damage was or was not excluded under § 1(3) of the CUDLA.

**43.** By its judgment of 17 November 2006 the Tallinn Circuit Court annulled the Tallinn Administrative Court judgment, arguing that the evidence referred to by Ü. Kalda did not prove that the opinion of the Ministry of Finance was erroneous. The circuit court held that Ü. Kalda had failed to refute the opinion of the Ministry of Finance that Ü. Kalda had himself, by his acts, caused the deprivation of his liberty as a preventive measure, because he had absconded the pre-trial proceedings during several months.

The general assembly holds further, that the Tallinn Circuit Court, too, had exceeded its competence, when it tried to establish the existence of circumstances excluding the compensation for damage to Ü. Kalda.

**44.** The appellant in cassation argues that the Tallinn Circuit Court had failed to justify in its judgment of 17 November 2006 why the evidence which served as the basis for the Tallinn Administrative Court judgment should be evaluated differently. The general assembly agrees with the appellant in cassation, that by this the Tallinn Circuit Court has violated the obligation established in § 653 of the Code of Civil Procedure to set forth the reason why the evidence must be attributed the value different from the value attributed to it by the court of first instance; nevertheless the general assembly argues that this is not of decisive importance for the adjudication of the present case.

**45.** It appears from the file of the case that Ü. Kalda was held in custody from 8 February until 14 November 2001, and according to the calculations of the Ministry of Finance the damage caused to Ü. Kalda by unjust deprivation of his liberty amounts to 103 880 kroons. There is no dispute between the parties about the number of days unjustly spent in custody or the amount of compensation for damage.

**46.** On the basis of the aforesaid the general assembly of the Supreme Court annuls the Tallinn Circuit Court judgment of 17 November 2006 in administrative matter no 3 05 119 and the Tallinn Administrative Court judgment of 16 June 2006 in administrative matter no 3 05 119, and renders a new judgment on the basis of § 72(1)4) of the Code of Administrative Court Procedure.

**47.** Proceeding from the fact that it is not established in the Tallinn Circuit Court judgment of 6 October 2004 in the criminal case of Ü. Kalda that the compensation for damage caused to Ü. Kalda by unjust deprivation of liberty was excluded, the general assembly shall hereby satisfy the application of Ü. Kalda for compensation for damage caused by unjust deprivation of liberty. The general assembly orders the payment of compensation in the amount of 103 880 to Ü. Kalda from the state budget.

**48.** The general assembly satisfies the appeal in cassation of Ü. Kalda, and on the basis of § 92(1) of the Code of Administrative Court Procedure orders the payment of Ü. Kalda's procedural expenses in the amount of 3658 kroons from the state budget. The security paid upon submission of the appeal in cassation shall be refunded to Ü. Kalda.

## **II.**

**49.** The Administrative Law Chamber of the Supreme Court transferred the case to the general assembly by its ruling, because it argued that § 1(3) of the CUDLA was unconstitutional. Pursuant to § 14(2) of the Constitutional Review Court Procedure Act the provision the constitutionality of which the Supreme Court evaluates by way of concrete norm control, must be relevant. In the constitutional review proceedings only such norms are relevant, which must be applied for the adjudication of the case and which are of decisive importance.

**50.** The general assembly is of the opinion that in the present case § 1(3) of the CUDLA is not relevant. § 1(3) of the CUDLA establishes the conditions which exclude the compensation for damage caused by unjust deprivation of liberty. When adjudicating Ü. Kalda's application for compensation for damage caused by unjust deprivation of liberty (part I of the judgment) it was not necessary to apply § 1(3) of the CUDLA. Consequently, § 1(3) of the CUDLA is not a relevant provision in the present case, and the general assembly can not review the constitutionality thereof.