

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 22 December 1998**

Review of clauses 2, 6, 7 and 8 of the Rules for Driving into and Parking in Tallinn Old Town.

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Uno Lõhmus and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Ants Kull and Jüri Pöld, at its open session of 9 December 1998, with the Chancellor of Justice Eerik-Juhan Truuväli, representatives of the Tallinn City Council Kalle Liiv and Andres Hallmäe, and the representative of the Minister of Justice Oliver Kask appearing, and in the presence of the secretary to the Chamber Piret Lehemets reviewed the petition of the Chancellor of Justice of 23 October 1998.

From the documents submitted to the Constitutional Review Chamber **it appears, that:**

On 22 February 1996, by its Regulation no. 8, the Tallinn City Council approved the Rules for Driving into and Parking in Tallinn Old Town (hereinafter "the Rules"). On 8 September 1998, pursuant to § 142 (1) of the Constitution and § 15(1) of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice addressed the Tallinn City Council with the proposal that it bring clauses 2, 6, 7 and 8 of the Rules into conformity with the Constitution. On 22 October 1998 the Chancellor of Justice petitioned the Supreme Court that it declare clauses 2, 6, 7 and 8 of the Rules invalid, as the Tallinn City Council had failed to discuss his proposal.

In the petition submitted to the Supreme Court the Chancellor of Justice argues that on the basis of § 2(2) and (3) of the Parking Act the local governments may establish payment for parking, not for driving in. Clause 2 of the Rules establishes that with the exception of cases enumerated in clause 9, the driving into and parking in Tallinn Old Town of motor vehicles is subject to payment twenty four hours a day. Clauses 6, 7 and 8 of the Rules regulate driving into and parking in Tallinn Old Town on the basis of tickets and permissions. The Chancellor of Justice is of the opinion that collecting payments for driving into certain areas amounts to a restriction of free movement. Pursuant to § 34 of the Constitution such restrictions may only be provided by law. Also, pursuant to § 154(1) of the Constitution all local governments operate independently pursuant to law. The Parking Act does not contain any norms that would serve as grounds for establishing payment for driving in as a restriction.

For the aforesaid reasons the Chancellor of Justice seeks that clauses 2, 6, 7 and 8 of the Rules be declared invalid.

At the court session the Chancellor of Justice adhered to his petition. He underlined that the failure of the Tallinn City Council to discuss the Chancellor of Justice's proposal is in conflict with § 142(2) of the Constitution, pursuant to which the body which passed the disputed legislation has the obligation to discuss the Chancellor of Justice's proposal within twenty days. In addition to what had been said in his petition the Chancellor of Justice referred to the conflict of clauses 2, 6, 7 and 8 of the Rules with § 157(2) of the Constitution.

The representatives of the Tallinn City Council explained that clauses 2, 6, 7 and 8 of the Rules do not restrict persons' free movement for the purposes of § 34 of the Constitution, as the restrictions are imposed on the movement of motor vehicles, not on the movement of persons. The representatives of the Tallinn City Council are of the opinion that the paid driving into the Old Town can not be considered as levying taxes. Instead, it constitutes offering a paid service. In addition to the Parking Act, the legal basis for the Rules is the Statutes of Tallinn Old Town Heritage Conservation Area.

The Minister of Justice is of the opinion that traffic control on the territory of a local government unit is a local issue and within the competence of local governments. Organisation of traffic, including restricting the driving into certain areas, can not be regarded as restricting the free movement of persons. What could be considered unconstitutional is the way the driving into the Old Town is restricted, namely by levying a tax for driving in. If disputed on the latter basis, the contested clauses of the Rules are in conflict with § 157(2) of the Constitution, because the requirement that local government may levy and collect taxes only on the basis of law, has not been met.

Having examined the materials submitted and having given a fair hearing to the Chancellor of Justice and the representatives of the Minister of Justice and the Tallinn City Council, **the Constitutional Review Chamber found that:**

I.

The Rules for Driving into and Parking in Tallinn Old Town were established by the Tallinn City Council Regulation no. 8 of 22 February 1996. The Regulation was issued pursuant to the Parking Act and the Tallinn City Council Regulation no. 23 of 14 December 1995 entitled "Establishment of parking rules for vehicles".

The Parking Act regulates the organisation of parking of vehicles on roads and the use of blocking devices and applying punishments for the violations of the parking rules. § 2(2) and 3 of this Act stipulate that the parking rules shall be established by local governments, whereas the parking rules shall include the requirements of the Traffic Code pertaining to stopping and parking, and it is possible to establish paid parking by the parking rules. The Parking Act does not regulate restrictions on driving into certain areas.

In addition to organisation of parking clauses 2, 6, 7 and 8 of the Rules, which the Chancellor of Justice requests to be declared invalid, also regulate the paid and unpaid driving into Tallinn Old Town of motor vehicles. Clause 2 of the Rules provides that the driving into and parking in the Old Town of motor vehicles is subject to payment twenty four hours a day, except in cases enumerated in clause 9 of the Rules. Pursuant to clause 9 the unpaid driving into Old Town is permitted for emergency and road service vehicles, physically disabled drivers or vehicles servicing persons with reduced mobility or who are blind, also on the basis of permits issued by the parking operator. Clauses 6, 7 and 8 regulate driving into and parking in Tallinn Old Town by driving-in tickets for single use, free permits for driving in and parking for single use and by paid driving-in permits.

The imposition of restrictions concerning driving in does not proceed from the Parking Act, because on the basis of the Act the local governments are to establish only parking rules.

Pursuant to clauses 4 and 13 of the Statutes of Tallinn Old Town Heritage Conservation Area, approved by the Government of the Republic Regulation no. 81 of 27 February 1995, the motor vehicle traffic within the centre of Old Town heritage conservation area is to be restricted, but the Statutes do not provide for establishment of paid driving into the Old Town.

Thus, the establishment of paid driving into Tallinn Old Town does not proceed from the Parking Act or from the Statutes of Tallinn Old Town Heritage Conservation Area.

II.

Pursuant to § 154 (1) of the Constitution all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law. It follows from the wording "all local issues" that the local governments have the right to decide on and manage all local issues on the basis of and under the conditions stipulated by the Constitution, without any need for norms delegating authority. In this regard the Constitution requires that an issue must essentially be a local and not a national one, and sets the requirement of legality.

Thus, a local government may, without a norm delegating relevant authority, decide on every issue that is not a national issue. If a local government were unable to decide on local issues without a specific norm delegating authority, it could not decide on and manage all local issues. The more so that it is impossible to foresee all local issues.

It does not proceed from the Constitution or from any law that the restriction of driving into Old Town of motor vehicles is a national issue. It proceeds from clause 13 of the Statutes of Tallinn Old Town Heritage Conservation Area that the Government of the Republic, too, was of the opinion that restriction of the traffic of motor vehicles in the Old Town of Tallinn was a local issue, because pursuant to the referred provision the Tallinn City Government shall, with the approval of the Heritage Conservation Board, impose restrictions on the traffic of cars in the centre of the Tallinn Old Town heritage conservation area.

Thus, the restriction of driving into Tallinn Old Town is a local issue, which can be decided on by the Tallinn City Council without a norm delegating pertinent authority.

The wording of § 154(1) of the Constitution "operate pursuant to law" has to be treated as the requirement of legality. This conclusion also springs from the comparative analysis of §§ 154(1) and 3(1). According to § 3 of the Constitution the powers of state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith. In both cases the term "pursuant to law" implies legality. Thus, a local government must resolve issues in conformity with laws. If legislation of general application issued by a local government to resolve local issues falling within the competence of local governments is in conflict with law, such legislation of general application is illegal irrespective of the fact that it resolves local issues, not national ones.

III.

The Chancellor of Justice petitioned the Supreme Court that it declare invalid clauses 2, 6, 7 and 8 of the Rules in their entirety. The referred clauses regulate both, the parking and the system of permits and paid driving into the Old Town, envisaged to restrict the driving into the Tallinn Old Town. The reasoning of the Chancellor of Justice's petition concerns only the paid driving into the Old Town, and not the system of permits for parking and driving in. Thus, the Chancellor of Justice's petition is wider in scope than the motives presented in the petition. Due to the fact that pursuant to § 11(1)5 of the Constitutional Review Court Procedure Act the petition has to include the motivation thereof, the constitutionality of clauses 2, 6, 7 and 8 of the Rules to the extent these pertain to parking and permits for driving into the Old Town of Tallinn shall not be reviewed within the present constitutional review case.

IV.

In the present constitutional review case the petition of the Chancellor of Justice is substantiated by referral to the conflict of clauses 2, 6, 7 and 8 of the Rules with regard to paid driving into Tallinn Old Town with § 34 of the Constitution. Within this conflict the Chancellor of Justice has underlined the fact that under § 34 of the Constitution the right to freedom of movement may be restricted in the cases and pursuant to procedure provided by law and to achieve the aims enumerated in the same provision of the Constitution.

The conflict between the paid driving into Tallinn Old Town and the right to freedom of movement stipulated by § 34 of the Constitution is but an apparent one. Everyone has the right to freedom of movement, despite the fact that driving of motor vehicles into Tallinn Old Town is restricted. Collecting charges on the traffic of motor vehicles does not infringe the right to freedom of movement. The right to freedom of movement is an essential expression of the individual right to self-determination and individual physical freedom. The right to freedom of movement first and foremost protects the right to reach a destination. That is why it is important that clause 9 of the Rules allows unpaid driving into the Old Town to physically disabled drivers and to vehicles servicing persons with reduced mobility or who are blind.

Thus, as far as the paid driving into Tallinn Old Town is concerned, there is no conflict between clauses 2, 6, 7 and 8 of the Rules and § 34 of the Constitution.

V.

The charge collected for driving into Tallinn Old Town should not be treated as a service fee but as a special purpose local tax. Pursuant to § 157(2) of the Constitution a local government has the right, on the basis of law, to levy and collect taxes, and to impose duties. The condition "on the basis of law" of this provision means a certain reservation to the effect that the authority to levy local taxes must proceed from a pertinent law.

Local taxes, the procedure and requirements for levying local taxes have been established by the Local Taxes Act. The taxes enumerated in § 5 of the Act do not include a tax for driving in. Pursuant to § 4(2) of the Local Taxes Act a local tax must not prevent the free movement of people, goods and services.

As the tax for driving into Tallinn Old Town has not been levied on the basis of a law, clauses 2, 6, 7 and 8 are in conflict with § 157(2) of the Constitution to the extent that they levy a tax on driving into the Old Town.

Although the Chancellor of Justice pointed to this conflict only at the court session, the Chamber still considers it possible to resolve the issue of conflict between clauses 2, 6, 7 and 8 of the Rules and § 157(2) of the Constitution. This conclusion is based on the fact that the Tallinn City Council failed to discuss the Chancellor of Justice's proposal and thus the right of the local government to independently decide on the Chancellor of Justice's proposals, stipulated in § 142 of the Constitution, lost its relevance due to the City Council's failure to act.

VI.

Pursuant to clause 11 of the Rules the parking operators are under the obligation to take the measures which are stipulated in clause 4 of the Parking Rules, established by the Tallinn City Council Regulation no. 23 of 14 December 1995 (i.e. punishments and blocking devices), when they discover a vehicle which has ignored the requirement of payment for driving into the Old Town.

The Chamber considers it necessary to point out that as the imposition of such punishments and use of blocking devices for ignoring the paid driving into Tallinn Old Town as a restriction does not proceed from a law, the application of clauses 2, 6, 7 and 8 in conjunction with clause 11 is in conflict with § 154(1) of the Constitution. This conclusion proceeds from § 2(2) of the Code of Administrative Offences, on the basis of which it is possible to establish administrative liability for the violation of local rules referred to in §§ 81, 118, 133, 142 and 167 of the Code. These provisions do not make any mention of a rule under which it would be possible to establish administrative liability for the violation of the paid driving into a part of a town as a restriction.

Pursuant to the fact that under § 4(3) of the Constitutional Review Court Procedure Act the Supreme Court reviews the constitutionality and legality of legislation and international agreements only to the extent requested in the petition, the Supreme Court has no authority to review the constitutionality and legality of clause 11 of the Rules. For the same reason the Supreme Court has no authority to review the constitutionality and legality of clauses 2, 6, 7 and 8 in conjunction with clause 11 of the Rules.

Proceeding from § 152(2) of the Constitution and from § 19(1)2) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber of the Supreme Court has decided:**

To partly satisfy the petition of the Chancellor of Justice of 23 October 1998, and to declare clauses 2, 6, 7 and 8 of the Rules for Driving into and Parking in Tallinn Old Town, approved by the Tallinn City Council Regulation no. 8 of 22 February 1996, invalid to the extent that they establish paid driving into Tallinn Old Town.

The judgment is effective from the date of its pronouncement, is final and is not subject to further appeal.

U. Lõhmus

Chairman of the Constitutional Review Chamber