

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT**

No. of the case	3-4-1-14-04
Date of decision	18 November 2004
Composition of court	Chairman Tõnu Anton, members Eerik Kergandberg, Ants Kull, Villu Kõve and Jüri Põld
Court case	Petition of the Tallinn Administrative Court to review the constitutionality the second sentence of clause 4.4 of the Appendix of the Tallinn City Council Regulation no. 9 of 30 January 2003.
Basis of proceeding	Judgment of the Tallinn Administrative Court of 28 May 2004 in administrative matter no. 3-944/2004
Court hearing	Written proceeding
Decision	To declare the second sentence of clause 4.4 of the Appendix of the Tallinn City Council Regulation no. 9 of 30 January 2003 invalid.

FACTS AND COURSE OF PROCEEDING

1. On 26 January 2004 Sven Soeson parked his car in a paid parking zone in Tallinn. On the same day a parking monitor of the AS Falck made decision no. 028888 on imposition a fine for delay for failure to pay parking charges, as the expiry date of the monthly parking card, placed on the dashboard of the car, was 25 November 2003.

2. S. Soeson filed an administrative appeal against the decision with the Tallinn Administrative Court. The Tallinn Administrative Court satisfied the appeal by its judgment of 28 May 2004, annulled the decision on imposition of a fine for delay, and did not apply and declared unconstitutional the second sentence of clause 4.4. of the Appendix "Parking charge" of the Tallinn City Council Regulation no. 9 of 30 January 2003 "Establishment of parking charge" (hereinafter "appendix to the Tallinn City Council Regulation).

OPINIONS OF THE ADMINISTRATIVE COURT AND THE PARTICIPANTS IN THE PROCEEDING

3. In the judgment referred to the Supreme Court, the Tallinn Administrative Court argued that the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation was in conflict with the first sentence of § 3(1) and with § 154(1) of the Constitution.

The administrative court pointed out that as § 50²(1) of the Traffic Act established unambiguously that a fine for delay may be imposed only upon failure to pay the parking charge or if the parking time paid for is exceeded, there was no legal ground for the imposition of the fine for delay, irrespective of whether the document certifying the right to park was or was not displayed as required. According to the judgment of the administrative court, the Tallinn City Council had, by its Regulation, changed the content of the concept of a fine for delay, determined by the legislator in § 50²(1) of the Traffic Act, and has thus exceeded the limits of the norm delegating authority, stipulated in § 50²(6) of the Traffic Act. The administrative court is of the opinion that the city council has, in fact, entitled a parking monitor to impose pecuniary penalties under the name of fine for delay.

4. The Tallinn City Council is of the opinion that the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation is not in conflict with the first sentence of § 3(1) and with § 154(1) of the Constitution.

The Tallinn City Council points out that pursuant to the Local Taxes Act, the parking charges are established and collected on the bases of and pursuant to the procedure established in the Traffic Act, and the Taxation Act shall be applied to parking charges to the extent established in the Traffic Act. The Traffic Act entitles a local government to establish by regulation the paid parking areas, the rate of parking charges and benefits applicable in payment of parking charges and cases of exemption from payment thereof. The contested provision of the appendix to the Tallinn City Council Regulation only determined the circumstances concerning display of documents certifying payment of parking charge, which were not determined by the referred Act, and the provision did not impose a separate ground for the imposition of a fine for delay. The duty to submit evidence in tax proceedings is also provided for in the Taxation Act.

5. In its written opinion the Tallinn Public Utility Agency argues that the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation is not a relevant provision.

The Tallinn Public Utility Agency refers to the fact that the Local Taxes Act allows the local government councils to establish charges for parking in paid public parking zones. The parking charges are established and collected on the basis of and pursuant to the procedure provided for in the Traffic Act, and the Taxation Act shall be applied to parking charges to the extent established in the Traffic Act. The Taxation Act permits the unilateral determination of the amount of a tax, and the Act also imposes on a tax-payer the obligation to prove the fulfilment of the duty to pay a tax. Clause 4.4 of the appendix to the Tallinn City Council Regulation, which enumerates the documents certifying the right to park and refers to liability for the violation of the parking procedure, has no independent regulative meaning. Decisions on imposition of fines for delay are not made on the basis of the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation, instead they are based on § 502(1) of the Traffic Act.

6. In his written opinion the Chancellor of Justice argues that in the second sentence of clause 4.4. of the appendix to its Regulation the Tallinn City Council has, without a legal basis and in conflict with §§ 3(1), 32(2) and 154(1) of the Constitution, restricted the exercise of the ownership right by regarding the failure to fulfil the requirement that a monthly parking card be displayed directly behind the windscreen or behind the window of the front door on the side of sidewalk so that it is fully visible and readable, to be equivalent with the failure to pay a parking charge.

The Chancellor of Justice points out that the petition of the Tallinn Administrative Court is relevant only to the extent regarding the failure to fulfil the requirement that a monthly parking card be displayed directly behind the windscreen or behind the window of the front door on the side of sidewalk so that it is fully visible and readable, to be equivalent with the failure to pay a parking charge.

Pursuant to the opinion the Chancellor of Justice a parking charge as a monetary obligation in public law infringes upon the principle of inviolability of ownership, established in § 32(2) of the Constitution, for the restriction of which there has to be a legal basis. The second sentence of clause 4.4. of the appendix to the Tallinn City Council Regulation establishes an exception concerning the termination of a tax relationship in public law. There is no legal basis for the establishment of such an exception.

7. The Minister of Justice is of the opinion that the contested provision of the appendix to the Tallinn City Council Regulation is not in conformity with § 3 of the Constitution, according to which public powers of state shall be exercised solely pursuant to the Constitution and laws.

The Minister of Justice points out that when imposing local taxes a local government must proceed from law. Clause 4.4 of the appendix to the Tallinn City Council Regulation extends the right to impose a fine for delay in comparison with the provisions of § 50²(1) of the Traffic Act. The Act does not give local governments the right to impose financial obligations on persons because they have not placed the document certifying the right to park behind the windscreen or behind the window of the front door on the side of sidewalk in a place where it is clearly visible and readable. In fact, the Tallinn City Council has established a tax without a legal basis.

8. In his opinion, submitted to the Supreme Court, Sven Soeson points out that he agrees with the conclusions of the Tallinn Administrative Court, pursuant to which the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation is in conflict with the first sentence of § 3(1) and § 154(1) of the Constitution. In addition, S. Soeson refers to several other provisions, concerning organisation of parking, which he considers to be in conflict with the Constitution.

According to S. Soeson's understanding, the Tallinn City Council has, by its Regulation, established additional conditions for benefits applicable in payment of parking charges and for taxation, which are not in conformity with the requirement of legality of legislation issued by local governments. When a fine for delay is imposed for the failure to display a document certifying the payment of parking charge, the subject of a right is not taxed for the failure to pay a parking charge, instead he or she is punished for having displayed a parking card wrongly. Thus, the Regulation has unconstitutionally criminalised the failure to display a parking card.

9. In its written opinion, submitted to the Supreme Court, the AS Falck argues that the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation is constitutional. The city of Tallinn had the right to regulate the certifying of the payment of parking charges, as the Traffic Act authorises the Tallinn City Council to establish not only parking charges and benefits applicable to payment of parking charges, but also the general organisation of parking. The imposition of the burden to prove that a parking charge has been paid on the person who is subject to pay parking charge, is justified. Cheap parking cards are a benefit, for the enjoyment of which certain conditions may be provided for.

CONTESTED PROVISION

10. Clause 4.4. of Appendix "Parking charge" of the Tallinn City Council Regulation no. 9 of 30 January 2003 "Establishment of parking charge" (KO 2003, 17, 465) establishes the following:

"4.4 In a paid parking area, when the obligation to pay the parking charge arises, a duly marked single parking ticket, a parking meter ticket, a monthly parking card or a sticker certifying paid parking through mobile communication, shall be placed directly behind the windscreen or behind the window of the front door on the side of sidewalk so that it is clearly visible and readable. A failure to comply with the requirement is considered equal to failure to pay a parking charge and a parking monitor shall have the right to impose a fine for delay. The parking clock must be set, the pointer thereof must not indicate the end of parking time."

The Tallinn Administrative Court did not apply and declared unconstitutional the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation.

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

I.

11. First of all, the Chamber shall consider the relevance of the provision declared unconstitutional by the Tallinn Administrative Court.

12. The relevance of the provision to be examined is a prerequisite for permissibility of concrete norm control initiated by the courts. The norms which are of decisive importance for the adjudication of a matter are relevant (*see judgment of the Supreme Court en banc of 22 December 2000 in matter no. 3-4-1-10-00 – RT III 2001, 1, 1, paragraph 10*). A norm is of a decisive importance when in the case of unconstitutionality of the norm a court should render a judgment different from that in the case of constitutionality of the norm (*see judgment of the Supreme Court en banc of 28 October 2002 in matter no. 3-4-1-5-02 – RT III 2002, 28, 308, paragraph 15*).

13. The Tallinn Administrative Court declared unconstitutional and did not apply the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation in its entirety. For the adjudication of this matter clause 4.4 is not decisive to the extent that it regards the failure to place a duly marked single parking ticket, a parking meter ticket, a monthly parking card or a sticker certifying paid parking through mobile communication, directly behind the windscreen or behind the window of the front door on the side of sidewalk so that it is clearly visible and readable, equal to failure to pay a parking charge.

14. Nevertheless, the Chamber is of the opinion that it is necessary to review the constitutionality of the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation in its entirety. This is necessary because the contested sentence can be logically regarded as a uniform legal norm, the aim of which is to consider a failure to prove the payment of a parking charge, using any of the referred means, equal to failure to pay the parking charge. The list of different ways of certifying the payment of a parking charge, included in the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation is merely technical in character, and thus, the review of constitutionality of the sentence does not exceed the limits of concrete norm control.

II.

15. Next, the Chamber shall answer the question of whether the Tallinn City Council has the right to consider the failure to display the documents certifying the right to park in a fully visible and readable place and the failure to pay the parking charge, as equal, and to establish that upon a failure to fulfil the requirement the right to impose a fine for delay arises.

16. The words “is considered equal to”, used in the second sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation refers to the fact that if a document certifying the right to park is not displayed as required, a parking monitor acquires the right to make a decision to impose a fine for delay, which can not be annulled during a subsequent challenge or court proceeding on the ground that the right to park had been created but the document certifying this had not been displayed as required. In fact, the Tallinn City Council has established a new necessary element of an offence, giving the right to impose a fine for delay, namely the right to impose a fine for delay if a document certifying the right to pay has not been displayed as required. Thus, the basic question of this dispute is whether the establishment of such a new necessary element of an offence is compatible with the principle of legality of the activities of local governments.

17. According to § 154(1) of the Constitution all local issues are resolved and managed by local governments, which “shall operate independently pursuant to law”. The words “shall operate ... pursuant to law” should be understood as the requirement of legality. Pursuant to § 3(1) of the Constitution, which establishes the general requirement of legality, the powers of state shall be exercised solely pursuant to the Constitution and laws which are in conformity therewith. The requirement of legality, arising from the first sentence of § 3(1) and § 154(1) of the Constitution means that the legal acts of local governments must be in conformity with the Constitution (*see judgment of the Constitutional Review Chamber of 10 April 2002 in case no. 3-4-1-4-02 – RT III 2002, 12, 120, paragraph 14*). If the resolution of certain issues has been regulated by law, a local government has no right to arbitrarily ignore the law and to extend its powers, including legislative power, on its own initiative.

18. § 2(1) of the Local Taxes Act establishes that a parking charge is a local tax. Pursuant to the first sentence of § 14¹(2) of the Local Taxes Act the parking charge is established and collected on the bases of and pursuant to the procedure established in the Traffic Act. Under the second sentence of § 50(5) of the Traffic Act, paid parking in the territory of local governments shall be organised pursuant to the provisions of §§ 50¹–50³ of this Act.

19. § 50²(1) of the Traffic Act establishes the following: “Upon failure to pay the parking charges or if the parking time paid for is exceeded, a parking monitor shall make a decision to impose a fine for delay (hereinafter decision on imposition of fine for delay).”

The referred provision of the Traffic Acts allows to impose a fine for delay only if the parking charge is not paid or if the parking time paid for is exceeded. § 50²(1) of the Traffic Act does not give a legal basis for imposition of a fine for delay in the case of a failure to display a document certifying the right to park as required, if the right to park had been created. The city council may not independently extend the grounds for creating the obligation to pay a fine for delay. By considering a failure to comply with the requirement to display a document certifying the right to park in a place where it can be fully seen to be equal to a failure to pay a parking charge, and by establishing the right to impose a fine for delay if the requirement is not fulfilled, the Tallinn City Council has established an independent ground for the imposition of a fine for delay, which does not proceed from § 50²(1) of the Traffic Act. Thus, the Tallinn City Council has, on its own initiative, extended the content of the concept of a fine for delay, and has established the fine for delay without a legal basis.

20. Considering the aforesaid the Chamber is of the opinion that the second sentence of clause 4.4. of Appendix “Parking charge” of the Tallinn City Council Regulation no. 9 of 30 January 2003 “Establishment of parking charge” is in conflict with § 154(1) of the Constitution.

III.

21. The aforesaid does not mean that a parking monitor can not make a decision on imposition of a fine for delay in the case of a lack of a document certifying the right to park or in the case the document is not displayed as required.

22. Pursuant to the first sentence of § 14¹(2) of the Local Taxes Act the parking charge is established and collected on the bases of and pursuant to the procedure established in the Traffic Act. The Traffic Act does not regulate the communication of documents certifying the payment of the parking charge. By the first sentence of clause 4.4 of the appendix to the Tallinn City Council Regulation, the city council has established the procedure for communicating the documents certifying the payment of a parking charge, which is not regulated by the Traffic Act. The Chamber is of the opinion that this is authorised by § 50¹(2) of the Traffic Act, which contains the authority, vested with a local government, to establish by a regulation the paid parking areas, the rate or differentiated rates of parking charges, and the benefits applicable in payment of parking charges and cases of exemption from payment thereof. The Chamber is of the opinion that an authorisation as wide as this, enabling a local government, *inter alia*, to establish such important elements of a tax relationship as a rate of a charge and benefits applicable in payment, gives a local government the right to regulate by a regulation also the procedure for communication of documents certifying the right to park. Thus, the Tallinn City Council has the right to establish a requirement that a document certifying the right to park (a duly marked single parking ticket, a parking meter ticket, a monthly parking card or a sticker certifying paid parking through mobile communication) be displayed behind the windscreen or behind the window of the front door on the side of sidewalk in a place where it is fully visible and readable.

23. If a person, who uses a parking place in a paid parking area, does not - contrary to the procedure for communicating certifying documents established by a local government - communicate documents certifying the payment of a parking charge, a parking monitor is entitled to presume the non-payment of a parking charge and to make a decision on imposition of a fine for delay. If a parking monitor could not proceed from the referred presumption, he or she could not effectively conduct parking supervision. In its earlier judgments the Supreme Court has found that a violation of parking arrangements is a specific offence, which is proceeded pursuant to a simplified procedure, and that bearing in mind the specific character and large number of these offences such simplified procedure is both reasonable and proportional (*see judgment of Constitutional Review Chamber of 22 February 2001 in case no. 3-4-1-4-01 – RT III 2001, 6, 63, paragraph 16*). Pursuant to § 503(2) of the Traffic Act, in order to contest a decision on imposition of a fine for day, made in a parking charge proceeding, a person may file a challenge with the rural municipality or city government or an appeal with an administrative court against the decision. Pursuant to the third sentence of § 16(1) of the Local Taxes Act, upon processing of a challenge, the provisions of Chapter 14 of the Taxation Act apply. The basis for satisfying a challenge or an appeal is, first and foremost, the fact that in regard to the person who submitted the challenge or appeal the right to park had actually been created.

24. The additional requests of S. Soeson shall be ignored. The norms, referred to by S. Soeson, are not relevant provisions, neither has the Tallinn Administrative Court dealt with the arguments of S. Soeson in its judgment and the parties to the proceeding have not been able to assess the constitutionality of the provisions.