

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 8 March 2000**

Review of the petition of the Chancellor of Justice to declare invalid the Regulations of the Keila rural municipality council regulating the organisation of shooting practice in the Keila rural municipality.

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 Põld, at its open session of 26 January 2000, with the representative of the Chancellor of Justice Aare Reenumägi, the representative of the Minister of Justice Priit Kama and the representative of Keila rural municipality Riho Ring appearing, and in the presence of the secretary to the Chamber Piret Lehemets reviewed petition of the Chancellor of Justice of 6 December 1999.

I. FACTS AND COURSE OF PROCEEDINGS

1. On 28 October 1998 the Keila rural municipality council issued regulation no. 36 "Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality" (RTL 1998, 327/328, 1340). This Regulation approved the "Procedure for organising shooting practice in the administrative territory of Keila rural municipality" (hereinafter "the Procedure"). The Procedure regulated organisation of any shooting practice in the administrative territory of the Keila rural municipality by anyone.

2. The Chancellor of Justice was of the opinion that by this Regulation the Keila rural municipality council has regulated national issues. Pursuant to § 6(3)2) of the Local Government Organisation Act (hereinafter "the LGOA") the regulation of these issues is not within the competence of a local government. On 24 April 1999 the Chancellor of Justice made a proposal to the Keila rural municipality council to bring this Regulation into conformity with the Constitution and laws.

3. The Keila rural municipality council discussed the Chancellor of Justice's proposal and on 26 May 1999 issued Regulation no. 50 "Amendments to the Keila rural municipality council Regulation no. 36 of 28 October 1998". This Regulation annulled reference to "§ 6(2)2)" of the LGOA in the preamble of the Keila rural municipality council Regulation no. 36 of 28 October 1998 "Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality", and replaced it by a reference to "§ 6(3)2)" of the same Act. The Regulation contains the following provision: "This regulation shall enter into force upon being made public".

4. The Chancellor of Justice was of the opinion that the Keila rural municipality council Regulation no. 50 of 26 May 1999 was also in conflict with the provisions of the Constitution and § 6(3)2) of the LGOA, pursuant to which a council regulation of general importance enters into force on third day after being made public pursuant to the procedure provided for in the statutes of the rural municipality unless a later date is provided for in the regulation. The Keila rural municipality considered its Regulation no. 36 of 28 October 1998 to be a regulation of general importance and published it in the Appendix to *Riigi Teataja* (the State Gazette). Amendments to the referred Regulation have to be issued and enforced pursuant to the same procedure. On 8 June 1999 the Chancellor of Justice made a proposal to the Keila rural municipality council to bring its Regulation no. 50 of 26 May 1999 into conformity with the Constitution and laws in regard to the procedure pursuant to which it was issued and enacted.

5. After that, on 21 June 1999, the Keila rural municipality council issued Regulation no. 55 "Amendments to the Keila rural municipality council Regulation no. 50 of 26 May 1999". This Regulation repealed clause 2 of the Keila rural municipality council Regulation no. 50 of 26 May 1999 "Amendments to the Keila rural municipality council Regulation no. 36 of 28 October 1998" and worded it as follows: "This regulation enters into force on 30 June 1999."

6. On 6 December 1999 the Chancellor of Justice addressed the Supreme Court with the petition to declare the following legislation invalid due to conflict with the Constitution and laws:

- 1) The Keila rural municipality council Regulation no. 36 of 28 October 1998 "Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality";
- 2) "Procedure for organising shooting practice in the administrative territory of the Keila rural municipality", approved by the Regulation;
- 3) The Keila rural municipality council Regulation no. 50 of 26 May 1999 "Amendments to the Keila rural

municipality council Regulation no. 36 of 28 October 1998”;

4) Clause 1 of the Keila rural municipality council Regulation no. 55 of 21 June 1999 “Amendments to the Keila rural municipality council Regulation no. 50 of 26 May 1999”.

7. In his petition the Chancellor of Justice is of the opinion that the Keila rural municipality council Regulation no. 50 of 26 May 1999 reflects the will of the council to replace “§ 6(2)2)” with the “§ 6(3)2)” in the preamble of the rural municipality council Regulation no. 36 of 28 October 1998 “Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality”. The Chancellor of Justice is of the opinion that upon issuing these two Regulations the council has avoided bringing Regulation no. 36 of 28 October 1998 into conformity with the Constitution and laws and satisfying his proposal.

The Chancellor of Justice admits that Regulation no. 55 of 21 June 1999 has entered into force pursuant to law, but clause 1 of the Regulation is in conflict with the Constitution and laws. At the time the Regulation was issued § 23 of the LGOA did not provide for a legal basis pursuant to which a rural municipality or city council is entitled to enact one and the same regulation for two or even more times.

The petition contains the opinion that the Keila rural municipality council Regulation no. 36 of 28 October 1998 “Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality” is illegal for the following reasons:

1) § 154(1) of the Constitution provides: “All local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law.” § 7(1) of the LGOA establishes that councils and governments have the right to issue regulations as legislation of general application. Proceeding from the Constitution the legislation of general or single application of rural municipality or city councils and governments are executive and administrative acts in relation to law. Administrative acts have to be verifiable and issued pursuant to law and pertain to local issues. Administrative legislation of general application is verifiable if it is reasoned and contains a reference to a specific provision of law or to a provision of legislation issued pursuant to and for the implementation of law. Pursuant to universally recognised technical rules of law-making the verifiable reasoning has to be given in the preamble of legislation. In the preamble of Regulation no. 36 the Keila rural municipality council has referred to § 6(2)2) of the LGOA. There is no such provision in the LGOA and therefore the regulation is not verifiable.

2) Regulation no. 36 of the Keila rural municipality council approved the “Procedure for organising shooting practice in the administrative territory of Keila rural municipality”, in which the terms used in the Weapons Acts are defined. A council is not competent to define the terms which have already been defined by a law.

3) Dealing with neighbourhood rights in clause 1 of the Procedure is in conflict with the Constitution as well as with the Law of Property Act. Imposition of safety requirements for shooting galleries and ranges, as well as imposition of other restricting requirements is not within the competence of local governments. Pursuant to § 1(3) and 58(5) of the Weapons Act such requirements are established pursuant to the procedure specified by the Government of the Republic.

4) Clauses 2 and 3 of the Procedure, regulating the activities of licensed organisers of shooting practice and application for special permits from the Keila rural municipality government, are in conflict with the Constitution and laws, as these, too, regulate national issues. These issues are regulated by § 48(1) and (2) and § 58(10) of the Weapons Act, and by § 32(4) of the Forest Act.

5) Clause 3.4. of the Procedure, which provides for the appellation procedure against decisions of the Keila rural municipality government, restricts the right established in § 15(1) of the Constitution that everyone whose rights and freedoms are violated has the right of recourse to the courts.

6) The right of a county governor to exercise supervision over legality, stipulated in § 85(1) to (4) of the Government of the Republic Act, has been restricted.

8. On 27 January 2000, one day after the Supreme Court hearing, the Keila rural municipality council declared the contested Regulations invalid.

II. LEGAL REASONING

Justifications of parties

9. At the Supreme Court hearing the representative of the Chancellor of Justice specified the chancellor’s petition. Pursuant to the specified petition the Chancellor of Justice is of the opinion that the Keila rural municipality council regulation no. 36 of 28 October 1998 “Approval of the procedure for organising shooting practice in the administrative territory of Keila rural municipality”, and the “Procedure for organising shooting practice in the administrative territory of Keila rural municipality”, approved by this Regulation, as well as Regulation no. 50 of 26 May 1999 and clause 1 of Regulation no. 55 of 21 June 1999 are in conflict with §§ 32(2) and 154(1) of the Constitution, with § 6(1) and (2) and § 6(3)1) and 2) of the LGOA; with § 1(1) and (3) in conjunction with § 2 of the Weapons Act and in conjunction with § 48(1), (2), (6) and

§ 58 of the same Act; with § 140 in conjunction with § 143(1) and (2) of the Law of Property Act, and with § 85(1) to (4) of the Government of the Republic Act. The representative of the Chancellor of Justice underlined that in the contested Regulations the Keila rural municipality council exceeded its competence when regulating national issues.

10. The representative of the Keila rural municipality explained at the court session that the need to regulate the organisation of shooting practice in the administrative territory of the Keila rural municipality was triggered by the use of Klooga shooting range by the Defence Forces. As ensuring of safety during shooting practice has not been regulated pursuant to the procedure provided in the Weapons Act, the council adopted the procedure for organising shooting practice to guarantee the safety of the inhabitants of the rural municipality and to guarantee the neighbourhood rights.

11. The Minister of Justice in his written opinion and his representative at the court session considered the Chancellor of Justice's petition to be partially justified. Guarantee of safety is a general principle of the Constitution and a means to guarantee fundamental rights of individuals, therefore the right of the Keila rural municipality council to issue the Regulation can not be denied. Nevertheless, the fact that a permission for organising shooting practice has to be obtained under the conditions determined by the council is unconstitutional. There is no conflict with § 15(1) of the Constitution or with § 85(1) to (4) of the Government of the Republic Act. The Chancellor of Justices petition to declare invalid the Keila rural municipality council Regulation no. 50 of 26 May 1999 is not justified. It is not about changing the legal basis, it is about correcting an insignificant typing error. Clause 1 of Regulation no. 55 of the council dated 21 June 1999 is in conflict with the Constitution.

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12. By the Minister of Defence of the Republic of Estonia directive no. 47 of 28 February 1997 the land unit of Klooga shooting range, located in Klooga country town, Keila rural municipality, Harju county, was retained in state ownership. The area of the land unit is 792.2 hectares and the intended use of the land unit is national defence land. By directive no. 53 of the Minister of Defence the shooting range land unit was given into the possession of Estonian Single Peacekeeping Company.

13. According to § 1(3) of the Weapons Act the requirements set to and the procedure for the use of shooting galleries and ranges of the Defence Forces shall be established by a regulation of the Government of the Republic or of a minister authorised by the government unless otherwise provided by a law. The Government of the Republic, by its Regulation no. 235 of 2 December 1997, authorised the Minister of Defence to establish the requirements set to and the procedure for the use of shooting galleries and ranges. On 1 February 2000 the Minister of Defence informed the Supreme Court that the requirements set to and the procedure for the use of shooting galleries and ranges have been submitted to the General Staff of the Defence Forces for approval and shall be enacted by the Minister of Defence in the nearest future. Thus, at the time the Keila rural municipality council issued its Regulations, the organisation of shooting practice in the shooting ranges of the Defence Forces was legally not regulated by a regulation of the Minister of Defence.

14. Shooting practice involves danger to the life and health of people. That is why the requirements set to and procedure for the use of shooting ranges must ensure that the use of weapons does not endanger people, including members of the armed forces, staying in or in the vicinity of shooting ranges.

Everyone's right to life and to the protection of health are protected by the Constitution (§§ 16 and 28). According to § 14 of the Constitution the guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments. If a sphere which needs to be regulated is related to danger to life or health, then the line between national and local issues is not decisive. Nevertheless, a local government body must see to it that its legislation is in conformity with the Constitution and laws.

15. Proceeding from § 1(3) of the Weapons Act the Constitutional Review Chamber of the Supreme Court is of the opinion that this Act does not regulate the construction, maintenance and use of shooting galleries and ranges of the Defence Forces. § 58 of the Weapons Act only establishes requirements with regard to civil shooting galleries and ranges. The obligation of the organiser of shooting practice to apply for a special permit from the rural municipality government, established by the Keila rural municipality council in clause 3 of the Procedure, is in conflict with § 58 of the Weapons Act.

According to § 58(6) of the Weapons Act the permit for organising a shooting contest or practice is issued by a Police Prefecture with the consent of a local government executive body. Thus, the Supreme Court agrees with the justification of the Chancellor of Justice that the system of issuing permits, established by the council, was not in conformity with the law.

16. That is why the chamber declares the procedure for organising shooting practice in the administrative territory of the Keila rural municipality to be in conflict with Weapons Act.

17. As on 27 January this year the Keila rural municipality council annulled the Regulations contested by the Chancellor of Justice, the Supreme Court does not find it necessary to assess the other reasons set out by the Chancellor of Justice in his petition, and can not declare these Regulations invalid.

18. The Constitutional Review Chamber is of the opinion that as long as the Government of the Republic or a minister authorised by the government has not established the requirements for shooting ranges of the Defence Forces and the procedure for the use thereof, it is prohibited to organise shooting practice in such shooting ranges.

Pursuant to § 4(1)4) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber of the Supreme Court has decided:**

To declare that the Procedure for organising shooting practice in the administrative territory of the Keila rural municipality was illegal.

The judgment is effective as of pronouncement, is final and is not subject to further appeal.

U. Lõhmus,
Chairman of the Constitutional Review Chamber