

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 23 November 1998**

Review of the petition of the Järva County Court to declare invalid the instructions for the implementation of the Republic of Estonia Social Tax Act, approved by the Minister of Finance Regulation no. 205 of 30 December 1993.

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 11 November 1998, with the Chancellor of Justice Eerik-Juhan Truuväli appearing, and in the presence of the secretary to the Chamber Piret Lehemets reviewed the petition of the Järva County Court of 21 September 1998.

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

In the judgment of 21 July 1998, concerning an appeal of AS Develo Trade Group against precept no. 57 of the Järva County Office of the Tax Board of 23 April 1998, the administrative judge of the Järva County Court did not apply the instructions for the implementation of the Republic of Estonia Social Tax Act, approved by the Minister of Finance Regulation no. 205 of 30 December 1993. In accordance with § 6(1)3) of the Constitutional Review Court Procedure Act the Järva County Court submitted a petition to the Supreme Court to declare the instructions invalid due to conflict with § 94(2) of the Constitution.

According to the judgment of the court, on the basis of tax audit report on AS Develo Trade Group, the Järva County Office of the Tax Board had adjusted the amounts of the legal person's income, value added tax and social tax payable by the public limited company for 1994 – 1996, and issued a precept to the public limited company to transfer the underpaid amounts and interests to the state budget by 23 May 1998 the latest.

When issuing the precept the Tax Board proceeded also from clause 4.2.i of Part II of the instructions for the implementation of the Republic of Estonia Social Tax Act.

On 8 June 1998, AS Develo Trade group filed an action with the Järva County Court, asking the court to declare the instructions illegal in their entirety. The county court satisfied the action in part. During the adjudication of the action the court found that the instructions for the implementation of the Republic of Estonia Social Tax Act, approved by the Minister of Finance, were not issued under an authorisation norm proceeding from law, and consequently the instructions were in conflict with the Constitution. § 9 of the Republic of Estonia Social Tax Act establishes that the procedure for the implementation of the Act shall be established by the Government of the Republic without the right to delegate this duty. Thus, the Minister of Finance Regulation no. 205 of 30 December 1993, and the instructions approved by the Regulation, were issued exceeding competence and are in conflict with § 94(2) of the Constitution, pursuant to which a minister shall issue regulations on the basis and for the implementation of law. The court did not apply the instructions for the implementation of the Republic of Estonia Social Tax Act.

The Constitutional Review Chamber, having given a fair hearing to the Chancellor of Justice who is of the opinion that the instructions for the implementation of the Republic of Estonia Social Tax Act, approved by the Minister of Finance Regulation no. 205 of 30 December 1993, are unconstitutional, and having examined the materials submitted, **found that:**

I.

The instructions for the implementation of the Republic of Estonia Social Tax Act were approved by clause 1 of the Minister of Finance Regulation no. 205 of 30 December 1993 entitled "Approval of the instructions for the implementation of the Republic of Estonia Social Tax Act", and were published in the Riigi Teataja Lisa [Appendix to the State Gazette] no. 2. Pursuant to clause 3 of the same Regulation it entered into force on 1 January 1994. The Minister of Finance Regulation no. 67 of 27 August 1998, entitled "Approval of legislation proceeding from the Taxation Act and Social Tax Act", established that the instructions for the implementation of the Republic of Estonia Social Tax Act shall become invalid as of 1 January 1999. The Regulation was amended by the Minister of Finance Regulation no. 88 of 4 November 1998, entitled "Amendment to the Minister of Finance Regulation no. 67 of 27 August 1998 entitled "Approval of legislation proceeding from the Taxation Act and Social Tax Act"". The Minister of Finance Regulation of 4 November 1998 established that the instructions for the implementation of the Republic of Estonia Social

Tax Act shall become invalid as of 10 November 1998. This Regulation was published on 13 November 1998 in Riigi Teataja Lisa no. 329/330. Thus, the instructions for the implementation of the Republic of Estonia Social Tax Act have become invalid by now.

II.

The petition of the Järva County Court was justified at the time it was submitted.

It was stated in the Regulation of the Minister of Finance of 30 December 1993 that it was issued under to the Republic of Estonia Social Tax Act. The Republic of Estonia Social Tax Act was adopted by the Supreme Council on 12 September 1990, and it became effective as of 1 January 1991. The referred Act shall become invalid as of 1 January 1999, when the Social Tax Act, adopted on 15 April 1998, will enter into force.

§ 9 of the Republic of Estonia Social Tax Act stipulated that the procedure for the implementation of the Act shall be established by the Government of the Republic. Consequently, only the Government of the Republic is authorised to issue regulations for the implementation of the Republic of Estonia Social Tax Act.

Pursuant to § 94(2) of the Constitution a minister shall issue regulations on the basis and for the implementation of law. As clause 1 of the Regulation of the Minister of Finance of 30 December 1993 was issued without an authorisation by law, it is in conflict with § 94(2) of the Constitution. The instructions for the implementation of the Republic of Estonia Social Tax Act, approved by clause 1 of the Regulation, are unconstitutional, too.

As the Constitutional Review Chamber can not declare invalid legislation which has already been declared invalid, the Chamber confines itself to stating the unconstitutionality of the instructions for the implementation of the Republic of Estonia Social Tax Act.

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

To dismiss the petition of the Järva County Court of 21 December 1998, because the Minister of Finance has already declared the instructions for the implementation of the Republic of Estonia Social Tax Act invalid.

Uno Lõhmus,
Chairman of the Constitutional Review Chamber