

S U P R E M E C O U R T
CONSTITUTIONAL REVIEW CHAMBER
JUDGMENT

in the name of the Republic of Estonia

Case number	5-17-12
Date of judgment	12 December 2017
Composition of court	Chairman: Priit Pikamäe; members: Hannes Kiris, Saale Laos, Jüri Pöld and Tambet Tampuu
Case	Review of constitutionality of § 54 ¹ (6) of the Code of Misdemeanour Procedure
Basis for proceedings	Harju County Court judgment of 20 June 2017 in case No 4-17-3323
Hearing	Written procedure

OPERATIVE PART

To dismiss the application by Harju County Court.

FACTS AND COURSE OF PROCEEDINGS

1. On 9 May 2017 at 15.47, supervisory inspector I. Skorohodov from Viimsi Rural Municipality Government in his capacity as an official of the extra-judicial body conducting the proceedings photographed a parked motor car Nissan Qashqai with registration plate 654MPD.
2. On 10 May 2017, supervisory inspector I. Skorohodov from Viimsi Rural Municipality Government drew up notice of fine No 201710051 in which he recorded that on 9 May 2017 at 15.47 motor car Nissan Qashqai with registration plate 654MPD was parked at Karulaugu tee 15 in the borough of Haabneeme in Viimsi rural municipality on a pedestrian crossing at a distance less than five metres from an intersecting road and in front of a gate. The body conducting the proceedings referred to § 20(1), § 21(2) cls. 5), 6) and 14) and § 21(4) cl. 1) of the Traffic Act (TA) and found it to have been established that the way the vehicle was parked significantly disrupted traffic since it obstructed the movement of pedestrians, vehicles could not enter or exit the stadium gate and, parked on a pedestrian crossing, the vehicle posed a hazard to road users because it obscured pedestrians stepping into the road from the pedestrian crossing and obstructed the view. The body conducting the proceedings qualified the act as a misdemeanour under § 241 ("Parking in an unauthorised place") subsection (2) of the TA, and imposed on Linnar Liivamägi a cautionary fine of 64 euros under § 54²(1) of the Code of Misdemeanour Procedure (CMP) and § 262 cl. 3) of the TA. The notice of fine stated that the person responsible for the motor vehicle may contest the notice within thirty days from delivery of the notice of fine on the bases and under the procedure laid down in § 54⁵ of the CMP, by lodging an appeal with the extra-judicial body conducting the proceedings that imposed the cautionary fine.
3. On 19 May 2017, L. Liivamägi contested the notice of fine, lodging an appeal with the supervisory inspector of Viimsi Rural Municipality Government, seeking annulment of the notice of fine and termination of the caution proceedings. In his appeal, L. Liivamägi asserted that the place of commission of the misdemeanour had been recorded erroneously in the notice of fine because the three photographs used to establish commission of the misdemeanour had not been taken in Karulaugu tee in the borough of Haabneeme. The photographs also show that the vehicle had not been parked on a pedestrian crossing, and the distance from the intersecting road had not been established. The vehicle had indeed been parked partly in front of the stadium gate, but this entrance is not in daily use and the legal possessor of the stadium had not placed any traffic control devices prohibiting parking or standing by the gate. The parked vehicle did not significantly disrupt traffic since it was parked in a vehicle bay built at the edge of the road. The traffic signs visible in the photographs and indicating an unregulated pedestrian crossing had been placed there in contravention of standard No 613:2001 "Traffic signs and their use" and without a legal basis since the site plan of the project of the relevant road section does not prescribe them.
4. By order of 23 May 2017, Viimsi Rural Municipality Government supervisory inspector I. Skorohodov dismissed the appeal by L. Liivamägi. The official of the extra-judicial body conducting the proceedings was of the opinion that in written caution proceedings a notice of fine may only be contested on the bases laid down in § 54⁵ cls. 3), 4), 5) and 6) of the CMP. In addition, the official of the extra-judicial body conducting the proceedings noted that traffic at the place in dispute had been properly regulated and traffic signs had been placed unambiguously, the preconditions for applying the caution procedure had been fulfilled, the traffic violation had been properly recorded, and commission of the misdemeanour had been established. Because the driver of the motor vehicle that had been parked in violation of traffic rules could not be immediately ascertained, the supervisory official recorded the violation in photographs allowing identification of the vehicle registration plate, the time and place of the violation, the person making the recording, and other essential facts. The conduct by L. Liivamägi did not involve any circumstances to vitiate the unlawfulness of the act. The order noted that under § 76(2) of the CMP a participant in proceedings and a person not participating in proceedings may lodge an appeal against the order with the head of the extra-judicial body conducting the proceedings.
5. On 31 May 2017, L. Liivamägi lodged an appeal with Viimsi Rural Municipality Government, seeking annulment of the order and penalty notice issued by the official of the extra-judicial body conducting the proceedings and termination of the proceedings. L. Liivamägi contended that the order had failed to deal with the assertions raised in the appeal on their merits, and he also disagreed with the assessment of the body conducting the proceedings that traffic at the place in dispute had been properly regulated, asserting that the traffic signs that had been arbitrarily placed were of no legal effect, consequently vitiating the unlawfulness of the act.

6. By order of 7 June 2017, Viimsi rural municipality secretary dismissed the appeal by L. Liivamägi relying on §§ 48 and 77 of the CMP. The head of the extra-judicial body conducting the proceedings agreed with the reasoning of the supervisory inspector that the appeal by L. Liivamägi did not contain the bases for contesting the notice of fine as laid down in § 54⁵ of the CMP. The fine under the caution proceedings had been imposed lawfully and the body conducting the proceedings had not violated the misdemeanour procedure law. The rural municipality secretary explained that traffic regulation at the place in dispute conformed with statutory requirements; compliance with the standards set by the Estonian Centre for Standardisation is not mandatory. The photographs show that the vehicle was parked on a pedestrian crossing, at a distance less than five metres from an intersecting road and in front of the stadium gate, thus causing a hazard to other road users. The order explained that it was appealable to Harju County Court under § 78(1) of the CMP.

7. On 15 June 2017, L. Liivamägi lodged an appeal with Harju County Court, seeking annulment of the order by the Viimsi rural municipality secretary. The appellant applied for his appeal to be allowed and the proceedings terminated and, if necessary, for setting aside of the provisions of the Code of Misdemeanour Procedure which bar examination of an appeal on the merits, and for initiation of constitutional review proceedings to check their compatibility with the fundamental right ensured under § 15(1) of the Constitution. L. Liivamägi repeated the assertions raised in the appeal of 19 May and 31 May 2017 and contended that substantive law had been misinterpreted and the facts wrongly assessed in the misdemeanour case. Procedural law had also been violated since both the extra-judicial body conducting the proceedings and its head had failed to assess the assertions and evidence presented on appeal on their merits, citing limited opportunities to contest a notice of fine. Section 54⁵(2) cl. 7) of the CMP does not set any substantive limits on contesting a notice of fine, similarly no bases under § 54⁶ of the CMP exist to decline to examine the appeal.

8. By order of 20 June 2017 in case No 4-17-3323, Harju County Court allowed the appeal by L. Liivamägi in part, annulled the order of Viimsi Rural Municipality Government of 23 May and 7 June 2017, and required Viimsi Rural Municipality Government to resume the misdemeanour proceedings in respect of L. Liivamägi under expedited or general procedure. The County Court declared partly unconstitutional and set aside § 54¹(6) of the CMP which bars resumption of misdemeanour proceedings under expedited or general procedure if the person responsible for a motor vehicle who receives a notice of fine contests the cautionary fine by claiming that no misdemeanour had been committed and referred the order to the Supreme Court for review of the constitutionality of that provision.

9. The County Court was of the opinion that even though the right of appeal against a notice of fine issued in written caution proceedings was laid down without restrictions under § 54⁵(1) of the CMP, on the other hand § 54¹(6) of the CMP in practice restricts the right of a person responsible for a vehicle to contest a notice of fine. In the opinion of the County Court, § 54¹ of the CMP disproportionately interferes with the right of recourse to the court ensured under § 15(1) and the fundamental right to equality under § 12 of the Constitution, because the right of appeal of a person responsible for a motor vehicle is more restricted compared to persons not responsible for a motor vehicle.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

10.-17. [Not translated]

PROVISION DECLARED UNCONSTITUTIONAL

18. Section 54¹(6) of the Code of Misdemeanour Procedure (RT I 2002, 50, 313):

"§ 54¹. Application of written caution procedure

[...]

(6) Application of the written caution procedure in accordance with the procedure set out in subsections (1) or (5) of this section terminates misdemeanour proceedings. The body conducting extra-judicial proceedings resumes misdemeanour proceedings under expedited or general procedure on the bases laid down in § 54⁶(3) or (6) of this Code.

[RT I 2008, 54, 304 - entered into force 27 December 2008]"

OPINION OF THE CHAMBER

19. Harju County Court has applied to the Supreme Court for review of constitutionality of § 54¹(6) of the CMP. In the opinion of the County Court, § 54¹(6) of the CMP restricts the right of a person responsible for a motor vehicle to contest a cautionary fine imposed in written caution proceedings because it excludes the possibility to resume misdemeanour proceedings if the fine was contested on the ground of absence of the statutory elements of a misdemeanour offence.

20. The County Court adjudicated the appeal by L. Liivamägi seeking to terminate the proceedings concerning imposition of a cautionary fine on him for committing a misdemeanour under § 241(2) of the Traffic Act, because commission of the act imputed to him had not been properly proved, the act was not prohibited and did not correspond to the statutory misdemeanour definition. The appeal to the County Court was lodged against the order of the Viimsi rural municipality secretary that dismissed the appeal by L. Liivamägi for annulment of the order of the supervisory inspector of Viimsi Rural Municipality Government. The order of the supervisory inspector, in turn, had dismissed the appeal by L. Liivamägi seeking annulment of the cautionary fine.

21. Written caution proceedings are a special procedure regulated in Division 1¹ of Chapter 10 "Extra-judicial proceedings" of the Code of Misdemeanour Procedure, which is applied in the event of traffic misdemeanours where violation of traffic rules was ascertained by an automatic traffic supervision device (§ 54¹(1) cl. 1) CMP) or where the driver cannot be immediately identified and the body conducting the proceedings recorded the violation in a photograph, film or other recording from which the registration plate of the motor vehicle and the time and place of establishing the violation are visually identifiable (§ 54¹(1) cl. 2) CMP). Misdemeanour proceedings that started with a procedural step for establishing a violation are deemed to be terminated upon application of the written caution procedure (§ 54¹(6) (first sentence) CMP) and a cautionary fine imposed in caution proceedings is not considered a misdemeanour punishment under the Act (§ 54¹(3) CMP). The presumption within caution proceedings is that the violation was committed by the person responsible for the motor vehicle (the registered owner of the motor vehicle or an authorised user entered in the register, § 54¹(1) CMP) on whom the extra-judicial body conducting the proceedings imposes a cautionary fine, drawing up and delivering to the person a notice of fine which is subject to compulsory enforcement in the event of failure to pay the fine and contest it by the deadline (§§ 54², 54³ and 54⁴ CMP).

22. The instant case involves a dispute as to the extent to which a person responsible for a motor vehicle may contest a cautionary fine imposed in written caution proceedings. Unlike in the case of a decision to impose a misdemeanour punishment by an extra-judicial body conducting proceedings in misdemeanour proceedings (expedited or general procedure), no appeal to a

county court can be lodged against a notice of fine, since this is precluded by § 114(2) of the CMP. The Act lays down a special procedure for contesting a cautionary fine, under which the person responsible for a motor vehicle may contest the fine by lodging an appeal against the notice of fine with the extra-judicial body conducting the proceedings that drew up the notice (§ 54⁵(1) and (2) CMP). Under § 54⁵(1) cl. 7) of the CMP, the appeal must also set out the substance of and reasons for the request by the appellant.

23. The presumption for imposing a cautionary fine, i.e. that the misdemeanour was committed by the person responsible for the motor vehicle, might not always be fulfilled. Therefore, the person responsible for a motor vehicle may also contest a notice of fine for the reason that someone else was using the vehicle at the time of commission of the misdemeanour. If the person responsible for a motor vehicle is aware who used the vehicle, they must provide that person's data in the appeal (§ 54⁵(3) CMP). In that case, a new notice of fine is drawn up and sent to the person indicated in the appeal, who may also contest the notice of fine with the extra-judicial body conducting the proceedings (§ 54⁶(4) and (5) CMP). If the motor vehicle or its registration plate were stolen, lost or destroyed before commission of the misdemeanour, the person responsible for the motor vehicle must submit confirmation to the extra-judicial body conducting the proceedings that the competent authority had been informed of the theft, loss or destruction of the motor vehicle or its registration plate prior to the time of commission of the misdemeanour (§ 54⁵(4), first alternative, CMP). If the person responsible for a motor vehicle contests the notice of fine on the basis that the unlawfulness of the act committed was vitiated, the law requires submission of evidence concerning the circumstances vitiating unlawfulness (§ 54⁵(4), second alternative, CMP). A similar regulatory arrangement applies in a situation where the person responsible for a motor vehicle is a legal person (§ 54⁵(5) and (6) CMP).

24. The competence of an extra-judicial body conducting proceedings in resolving an appeal lodged against a notice of fine is laid down in § 54⁶ of the CMP. The extra-judicial body conducting the proceedings may refuse to open proceedings or decline to examine the appeal, to annul the notice of fine, or resume misdemeanour proceedings under expedited or general procedure.

25. Opening of proceedings is refused if the appeal does not comply with the requirements laid down in § 54⁵(2) of the CMP (§ 54⁶(1) (first sentence) CMP), except in the event of absence of the residential address of the appellant in the appeal who is a natural person, in which case examination of the appeal will be declined without giving a deadline to eliminate the deficiencies (§ 54⁶(1) (second sentence) CMP). If deficiencies in the appeal are not eliminated by the deadline or if the appeal was lodged by a person without legal standing, or if the time limit for appeal has expired and has not been restored, examination of the appeal will be declined (§ 54⁶(2) cls. 1)–3) CMP). In addition to those ordinary grounds for declining to examine an appeal, examination of an appeal in the case of contesting a notice of fine is also declined if the appeal does not include confirmation concerning the theft, loss or destruction of the motor vehicle or its registration plate or evidence of circumstances vitiating unlawfulness, even though those circumstances are relied on when contesting the notice of fine (§ 54⁶(2) cl. 4) CMP).

26. If a notice of fine is contested by a person specified by the person responsible for a motor vehicle, the body conducting proceedings must resume the misdemeanour proceedings under expedited or general procedure (§ 54⁶ 6) CMP). Upon resumption of misdemeanour proceedings, caution proceedings cease and all the rules regulating expedited or general procedure respectively apply, including the right to lodge an appeal with the county court against the decision of the extra-judicial body conducting the proceedings. The law does not provide for annulment of a notice of fine in the event of resumption of misdemeanour proceedings, but in that case the notice of fine does not enter into force and cannot be enforced, so that the notice of fine is deprived of legal effect.

27. But also if the person responsible for a motor vehicle contests a notice of fine (by lodging a proper appeal) for the reason that the motor vehicle or its registration plate was stolen, lost or destroyed, and submits confirmation to that effect (§ 54 subs. (4), first alternative, and subs. (6), first alternative, CMP), or provides evidence to vitiate the unlawfulness of the act described in the notice of fine (§ 54⁵ subs. (4), second alternative, and subs. (6), second alternative, CMP), as a rule misdemeanour proceedings must be resumed but, alternatively, the body conducting the proceedings may order annulment of the notice of fine, not resuming the misdemeanour proceedings. This conclusion arises from interpreting § 54¹(6) (second sentence) and § 54⁶(3) of the CMP in combination. In accordance with § 54¹(6) (second sentence) of the CMP, misdemeanour proceedings are resumed in the cases set out in § 54⁶(3) and (6) of the CMP, while § 54⁶(3) lays down a possibility not to resume misdemeanour proceedings, thus meaning that resumption of misdemeanour proceedings is also possible.

28. In the opinion of the Chamber, when adjudicating an appeal lodged against a notice of fine the extra-judicial body conducting the proceedings is first of all competent to assess whether the appeal complies with the statutory requirements. If the appeal complies with requirements, the body conducting the proceedings can only decide whether to resume misdemeanour proceedings or to annul the notice of fine. A decision whether to annul a notice of fine is to a large extent similar to a decision to terminate misdemeanour proceedings for reasons of expediency (under § 30(1) cl. 1) of the CMP proceedings are terminated if the guilt of the person subject to proceedings is negligible and there is no public interest in continuing misdemeanour proceedings), and in reaching that decision the body conducting the proceedings must also assess the assertions raised in the appeal and the evidence presented. If the body conducting the proceedings does not agree with the assertions in the appeal or does not consider the evidence presented relevant or sufficient for annulment of the notice of fine, it cannot dismiss the appeal but must resume the misdemeanour proceedings.

29. The Chamber agrees with the conclusion of the County Court that the law only enables resumption of proceedings or annulment of a notice of fine in the cases set out in § 54⁶(3) of the CMP (the situation described in § 54⁵(4) and (6) CMP) or § 54⁶(6) of the CMP (the situation described in § 54⁵(3) and (5) CMP). The Chamber does not agree with the opinion of the Minister of the Interior that the concept of a circumstance vitiating unlawfulness as set out in § 54⁵(4) and (6) of the CMP could be interpreted broadly, also including assertions concerning absence of the statutory elements of a misdemeanour raised in the appeal. Under § 27 of the Penal Code, an act is unlawful if it corresponds to the statutory offence definition and the unlawfulness of the act is not vitiated by the Penal Code, another Act, international conventions or international customs. Thus, a circumstance vitiating unlawfulness has specific substance in penal law doctrine and departing from it in interpreting the Code of Misdemeanour Procedure is not justified.

30. However, the fact that resumption of proceedings or annulment of a notice of fine is possible only in limited cases cannot lead to the unequivocal conclusion that the right of a person responsible for a motor vehicle to contest a notice of fine is limited only to these grounds and the fine cannot be contested in extra-judicial proceedings for any other reason, including the absence of the statutory elements of a misdemeanour. First, the legal standing of a person responsible for a motor vehicle is not restricted by the wording of § 54⁵(1) and (2) of the CMP, which primarily regulates contesting a notice of fine with the extra-judicial body conducting the proceedings, and, second, § 54⁶(2) of the CMP does not provide a basis for declining to examine an appeal lodged for other reasons. In the opinion of the Chamber, examination of an appeal lodged on the ground of absence of the statutory elements of a misdemeanour cannot be declined, for example, relying on § 54⁶(2) cl. 2) of the CMP, under which

examination of an appeal is declined if it was lodged by a person with no legal standing. As regards the substance of legal standing, this provision explicitly refers to § 54⁵(1) of the CMP which confers the right to lodge an appeal on the person responsible for a motor vehicle, without restricting that right in any way.

31. On the basis of the foregoing, the Chamber is of the opinion that the Code of Misdemeanour Procedure contains a gap – on the one hand, the law does not restrict contesting a cautionary fine while, on the other hand, no options for action have been provided to the extra-judicial body conducting the proceedings in a situation where the person responsible for a motor vehicle contests a cautionary fine on the ground of absence of the statutory elements of a misdemeanour. The body conducting the proceedings cannot decline to examine the appeal while, at the same time, it has no basis either to allow the appeal, i.e. resume the misdemeanour proceedings, or to annul the notice of fine, or also to dismiss the appeal. Therefore, the main issue in the instant case is how to interpret the law, i.e. whether examination of an appeal lodged on grounds not mentioned in § 54⁵(3)–(6) of the CMP should be declined because the person responsible for a motor vehicle has limited legal standing, or whether the law should be interpreted as meaning that the person's legal standing is not limited and misdemeanour proceedings should also be resumed if the person responsible for the motor vehicle has lodged an appeal on the ground of absence of the statutory elements of a misdemeanour.

32. The Supreme Court has held that in the event of different possibilities for interpretation the constitutionally-compliant interpretation should be preferred to interpretations which do not comply with the Constitution. The Supreme Court has no grounds to repeal a legal provision for reasons of unconstitutionality if the provision can be interpreted in a constitutionally-compliant manner. Preference should also be given to the interpretation that ensures the strongest protection of different constitutional values (Supreme Court *en banc* judgment of 22 February 2005 in case No 3-2-1-73-04, para. 36).

33. In the opinion submitted to the Supreme Court, the Chancellor of Justice and the Riigikogu Constitutional Committee found that the Code of Misdemeanour Procedure restricted the legal standing of the person responsible for a motor vehicle, enabling contestation of a cautionary fine only on the grounds laid down in § 54⁵ subsections (3) and (4) as well as (5) and (6), and the regulatory arrangement was unconstitutional. The Chamber finds that such an interpretation would be contrary to the Constitution since it would interfere disproportionately with the fundamental right to property ensured under § 32 of the Constitution, and the right of recourse to the court laid down in § 15(1) (first sentence) of the Constitution. A cautionary fine interferes with the fundamental right to property and even though the interference is of low intensity due to the limited extent of the cautionary fine (maximum 190 euros, § 54¹(4) CMP), it is not constitutional if the fine has been imposed without a basis. The first sentence of § 15(1) of the Constitution grants everyone whose rights and freedoms have been violated the right of recourse to the courts. Since § 114(2) of the CMP precludes contesting a cautionary fine directly in the county court, the grounds on which a cautionary fine was imposed can be contested in court only if misdemeanour proceedings are resumed. If examination of an appeal lodged by the person responsible for a motor vehicle is declined due to the absence of legal standing, that person has no right of recourse to the court for review of the circumstances on which the cautionary fine was based.

34. Restricting legal standing would be justified if proof of the statutory elements of a misdemeanour based on which a cautionary fine is imposed is impeccable, it is clear that the misdemeanour was correctly qualified, and no circumstances exist precluding misdemeanour proceedings under § 29 of the CMP. Such presumptions can be primarily relied on if the possibility of an error by the body conducting the proceedings has been reduced to a minimum: e.g. the violation was detected by an automatic traffic supervision device (§ 54¹(1) cl. 1) CMP), but even that would not rule out a dispute over commission of a misdemeanour or its proper ascertainment (see, e.g. Supreme Court Criminal Chamber judgment of 15 March 2012 in misdemeanour case No 3-1-1-17-12, para 8.3). Of course, in cases set out in § 54¹(1) cl. 2) of the CMP – where the supervisory official who detected the act could not immediately identify the driver and the violation was recorded in a photograph, film or other recording – it also cannot be presumed that occurrence of the violation was established incontrovertibly, the misdemeanour was correctly qualified and no circumstances existed to preclude misdemeanour proceedings. However, in the opinion of the Chamber, reliance on such presumptions must not completely rule out contestation in court of the circumstances on which a cautionary fine was imposed. This could be constitutionally required, for example, in a situation where for some reason the photograph, film or other recording made by the official who discovered the violation does not unequivocally enable identifying the time and place of the violation or the registration plate of the motor vehicle, similarly to where disputes have arisen over the issue whether an act recorded in a photograph, film or other recording is a misdemeanour and whether it was correctly qualified. The latter is also the issue in the instant case. In the notice of fine sent to L. Liivamägi, commission of the act laid down in § 241(2) of the Traffic Act was imputed to him, i.e. parking a vehicle in an unauthorised place or in violation of the parking rules indicated by a traffic control device in such a manner that it poses a hazard to other road users or significantly disrupts traffic, and L. Liivamägi contested the notice of fine, *inter alia*, for the reason that parking did not pose a hazard to other road users nor did it significantly disrupt traffic. If a person is deprived of the right of recourse to the court in resolving the matters in question, this may lead to unfounded imposition of a fine, which, however, would not be compatible with the Constitution.

35. On the basis of the foregoing, the Chamber is of the opinion that the ground for resumption of misdemeanour proceedings laid down in § 54⁶(6) of the CMP should also be applied by way of analogy in the case where a cautionary fine is contested by the person responsible for a motor vehicle. Such an interpretation would lead to a constitutionally-compliant result since it also ensures judicial protection of the rights of the person responsible for a motor vehicle. In that case, the person responsible for a motor vehicle would also be treated equally with a person whose data the person responsible for the motor vehicle provided in the appeal in line with § 54⁵(3) or (5) of the CMP and who contested the cautionary fine in line with § 54⁶(6) of the CMP.

36. On the basis of the foregoing and relying on § 15(1) cl. 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application by Harju County Court.