

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 11 January 1995**

Review of the petition of the Tallinn Administrative Court for the declaration of invalidity of clause 40 of the "Rules of Issue and Extension of Residence and Work Permits to Aliens".

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Rait Maruste and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld, at its session of 11 January 1995, with the Chancellor of Justice Eerik-Juhan Truuväli appearing and in the presence of the secretary to the Chamber Kerdi Raud, reviewed the petition, included in the judgment of the Tallinn Administrative Court of 26 October 1994, to declare invalid clause 40 of the "Rules of Issue and Extension of Residence and Work Permits to Aliens", approved by the Minister of Internal Affairs Regulation no. 3 of 3 February 1994.

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

On 5 July 1994, the North Tallinn office of the Citizenship and Migration Board decided to refuse to issue a residence and work permit to V. Sidorkin. This decision was based on clause 40 of the "Rules of Issue and Extension of Residence and Work Permits to Aliens" (hereinafter "the rules"), which were approved by the Minister of Internal Affairs Regulation no. 3 of 3 February 1994. Clause 40 establishes the following: "Aliens who have permanent address registration in Estonia in their employer's personnel department or other non-dwelling space under the former Soviet Union laws, shall be treated equally with the applicants from outside Estonia, unless prior to such registration they had a permanent address registration in Estonia." Since 1975, when V. Sidorkin finished Tallinn Marine School and started working, he had had permanent address registration with the personnel department of the now state public limited company Ookean. Before that, he had no permanent address registration in Estonia. The North Tallinn office of the Citizenship and Migration Board explained to V. Sidorkin that he was entitled to apply for residence permit at the representations of the Republic of Estonia.

V. Sidorkin had recourse to the Tallinn Administrative Court claiming that the decision of the North Tallinn office of the Citizenship and Migration Board of 5 July 1994 was wrongful and has to be declared illegal, as he has been residing in Estonia since 1975 on the basis of a permanent address registration with the personnel department, and has retained no connection with his former place of residence in Russia.

On 26 October 1994, when resolving the administrative case no. I-3-321/94, the judge of the Tallinn Administrative Court S. Tromp decided to satisfy V. Sidorkin's claim, declared clause 40 of the rules unconstitutional, and did not apply it. The court justified its decision to satisfy the complaint of V. Sidorkin by the fact that pursuant to his passport data he had a permanent address registration, and that according to the rules of that time such registration could not be regarded as temporary. That is why the court found that V. Sidorkin must be regarded to be an alien who had settled in Estonia before 1 July 1990, and is a permanent resident who, pursuant to § 20(2) of the Aliens Act, is entitled to residence and work permits. The decision to declare clause 40 of the rules unconstitutional was based upon the argument that the provision "... is in conflict with the principle of a state based on social justice, democracy, and the rule of law, established in § 10 of the Constitution, and which is the basis of Estonian legal order. In order to observe the principle of a state based on the rule of law, citizens' trust in justice and lawfulness of state power should be guaranteed."

At the court session the Chancellor of Justice argued that clause 40 of the rules was unconstitutional.

Having examined the documents submitted and having given a fair hearing to the Chancellor of Justice, the Constitutional Review Chamber found, that:

I. According to § 3(2) of the Constitutional Review Court Procedure Act the Supreme Court shall not, by way of constitutional review, resolve cases which, according to law, fall within the competence of other courts. Pursuant to §§ 3 and 4 of the Code of Administrative Court Procedure the dispute between V. Sidorkin and the North Tallinn office of the Citizenship and Migration Board has to be solved by an administrative court. Therefore, the Constitutional Review Chamber is not authorised to review whether the Tallinn Administrative Court solved the referred case appropriately. The Constitutional Review Chamber exercises control over the constitutionality and legality of legislation.

II. The content of clause 40 of the rules is not in conflict with § 10 of the Constitution on the grounds set forth in the judgment of Tallinn Administrative Court of 26 October 1994.

III. The Tallinn Administrative Court, when declaring the referred provision to be unconstitutional, has failed to consider that according to § 94(2) of the Constitution a minister shall issue regulations on the basis and for the implementation of law. Before declaring the rules unconstitutional, the Administrative Court should have found out whether the Aliens Act or any other Act authorised the Minister of Internal Affairs to issue the rules. Neither the Aliens Act nor other Acts authorise the minister to issue the regulation by which the rules were approved. § 2 of the Aliens Act, pursuant to which the legally binding acts established in this Act shall be performed by government agencies designated by the Government of the Republic, constitutes no ground for the minister to issue regulations. The provision authorises the Government of the Republic to appoint government agencies who issue legislation of specific application or perform other acts of individual character.

The Minister of Internal Affairs Regulation no 3 of 3 February 1994, by which the rules were approved, states that it is based on clause 1 of "The Procedure for Issuing Residence and Work Permits to Aliens", approved by the Government of the Republic Regulation no. 288 of 21 September 1993. In its original wording the provision established that the procedures for the extension of time limits for issuing residence and work permits shall be approved by the Ministry of Social Affairs. With its Regulation no. 319 of 19 October 1993 the Government of the Republic authorised the Ministry of Internal Affairs to approve the rules.

The right of the Government of the Republic to establish the procedure for issuing residence and work permits with its regulations arises from §§ 9(2), 9(3), 12(5) and 21(1) of the Aliens Act. But this Act does not give the Government of the Republic the right to authorise the Minister of Internal Affairs to issue regulations to implement the Act. Therefore, the Minister of Internal Affairs has exceeded his competence by issuing Regulation no. 3 of 3 February 1994. As the Regulation of the Minister of Internal Affairs of 3 February 1994 was issued exceeding competence, the Regulation itself and the rules approved by it are in conflict with § 94(2) of the Constitution. Thus, the Tallinn Administrative Court did not have to render legal opinion on clause 40 of the rules. Failure to observe the procedure established for passing legislation always results in the unlawfulness of the legislation.

Pursuant to § 4(3) of the Constitutional Review Court Procedure Act the Supreme Court shall review the constitutionality of legislation and international treaties only to the extent requested in the petition. In the present case the observance of the requirement of extent means that in the conclusion of this judgment the Supreme Court shall render its opinion only on whether clause 40 of the rules was issued in accordance with to the Constitution.

Considering the aforesaid and pursuant to § 152(2) of the Constitution and § 19(1)2) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

To satisfy the petition included in the judgment of the Tallinn Administrative Court of 26 October 1994, and to declare invalid clause 40 of the "Rules of Issue and Extension of Residence and Work Permits to Aliens", approved by the Government of the Republic Regulation no. 3 of 3 February 1994.

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

Rait Maruste
Chief Justice of the Supreme Court