

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 2 November 1994**

Review of the petition of the Chancellor of Justice for the declaration of invalidity, under of § 152(2) of the Constitution, of the Tallinn City Council Resolution no. 52 of 31 March 1994, entitled "Paid and Unguarded Parking of Motor Vehicles".

The Constitutional Review Chamber sitting in panel presided over by the Chairman of the Chamber Rait Maruste and composed of members of the Chamber Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Põld at its session of 21 October 1994, with the Deputy Chancellor of Justice-Adviser Aare Reenumäe and the representative of Tallinn City Council Heikki Ojamaa appearing, and in the presence of the secretary to the Chamber Kerdi Raud

reviewed the petition of the Chancellor of Justice no. 116 of 6 September 1994.

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

According to clause 2 of the Tallinn City Council Resolution no. 52 of 31 March 1994, entitled "Paid and Unguarded Parking of Motor Vehicles" it is allowed, "pursuant to rules established by the City Government, to lock a wheel of a car that has been parked without a valid parking ticket or in a non-parking area."

On 26 May 1994, on the basis of § 142(2) of the Constitution and § 15(1) of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice made a proposal to the Tallinn City Council that it bring Resolution no. 52 in conformity with the Constitution, the Code of Administrative Offences and the Local Government Organisation Act. The Tallinn City Council did not reconcile Resolution no. 52. with the referred Acts within the 20 days prescribed by law.

Pursuant to § 142(2) of the Constitution and § 17 of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice made a proposal to the Supreme Court that it declare invalid, on the basis of § 152(2) of the Constitution, the Tallinn City Council Resolution no. 52 of 31 March 1994.

The Chancellor of Justice is of the opinion that the Resolution of the City Council is in conflict with the Constitution and the law for the following reasons:

1. § 32 of the Constitution establishes: "Everyone has the right to freely possess, use and dispose of his or her property. Restrictions shall be provided by law." By clause 2 of the Tallinn City Council Resolution of 31 March 1994, this constitutional right has been illegally restricted, because clause 2 of the City Council Resolution allows, "pursuant to rules established by the City Government, to lock a wheel of a car that has been parked without a valid parking ticket or in a non-parking area," with the aim of preventing further use of the vehicle. No Act gives permission to apply devices preventing the use of a motor vehicle. Thus, clause 2 of the Tallinn City Council Resolution no. 52 of 31 March 1994 is in conflict with § 32 of the Constitution.

2. The Code of Administrative Offences regulates liability for acts for which administrative liability is provided. Such acts include the majority of road traffic offences, including non-compliance with requirements for parking and standing. Only such punishments as fines, deprivation of special rights, or administrative arrest (§ 19) may be applied for administrative offences. The Code does not prescribe for the application of devices that prevent the use of a person's property, and the use of such devices can only be regarded as punishment for an act, in this case - for improper or unpaid parking. As all cars bear official licence plates, it takes no special measures to identify the owner or the user of a car. Also, there is no need to identify the driver, the owner, or the user of the car on the spot. That is why clause 2 of the Tallinn City Council Resolution no. 52 of 31 March 1994 is in conflict with § 19 of the Code of Administrative Offences.

3. According to § 7(1) of the Local Government Organisation Act a local government council has the right to issue regulations as legislation of general application, and according to § 7(2) a council has the right to adopt resolutions as legislation of specific application. According to legal theory, legislation of general application establishes general rules of conduct and legislation of specific application regulates individual cases pertaining to specified facts, events or persons, and this has been born in mind in the referred § 7. Paid and unguarded parking affects a large, indefinite number of Tallinn inhabitants and visitors, and thus, the Tallinn City Council Resolution no. 52 of 31 March 1994 can not be considered as legislation of specific application, and the resolution is in conflict with § 7 of the Local Government Organisation Act.

In his written opinion the Minister of Justice Urmas Arumäe supports the Chancellor of Justice's petition.

Having examined the submitted documents and having given a fair hearing to the Deputy Chancellor of Justice-Adviser and having listened to the explanations of the representative of Tallinn City Council, the Constitutional Review Chamber finds, that:

The petition of the Chancellor of Justice was justified at the time it was submitted.

Clause 2 of the Tallinn City Council Resolution no. 52 of 31 March 1994, which provided for the possibility of locking a wheel of a car which had been parked without a valid parking ticket or improperly, was in conflict with:

1. § 32(2) of the Constitution, which gives every person the right to freely possess, use and dispose of his or her property, whereas restrictions to this right should be established by law. § 154(1) of the Constitution prescribes that all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law. To allow for a wheel of a car, which has been parked improperly or without a valid ticket, to be locked, constitutes restriction of ownership but also means resolving local issues. At the same time there is no Act giving local governments the right to prescribe for the use of such means. The Tallinn City Council has, without any legal ground, established a possibility to lock a wheel of a car, which has been parked without a valid parking ticket or improperly, thus restricting the use of property (a car).

2. According to § 7(1) of the Local Government Organisation Act a council has the right to issue regulations as legislation of general application. According to § 7(2) resolutions are legislation of specific application. Legislation of general application regulates general rules of conduct, legislation of specific application regulates individual cases. Paid and unguarded parking of cars concerns a large, indefinite number of cases, and legislation regulating such cases is, thus, legislation of general application and has to be issued as a regulation, not as a resolution.

The Tallinn City Council Resolution states that it is effective from the date of its adoption. This is in conflict with § 23(1) of the referred Act. This provision requires that regulations of a council must be made public before they take effect.

On 20 October 1994, by Regulation no. 15, the Tallinn City Council declared invalid clauses 1, 2, 3 and 5 of its Resolution no. 52 of 31 March 1994, by which the City Council had imposed general rules of conduct and given them effect before publication, that is as of the adoption of the resolution. The representative of the City Council submitted the Regulation of 20 October 1994 to the Court at the court session. The court can not declare the Resolution invalid because the City Council itself had declared invalid that part of its Resolution, which was not in conformity with the Constitution and the Local Government Organisation Act. The court confines itself to the finding that the Resolution of the City Council was unconstitutional.

On the basis of the foregoing and pursuant to § 15(2) and 152(2) of the Constitution and § 19(1)2) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

to dismiss the petition of the Chancellor of Justice no. 116 of 6 September 1994, as the grounds for the petition have ceased to exist.

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

Rait Maruste

Chief Justice of the Supreme Court