

**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 § 152(2) of the Constitution, of the Tallinn City Government Regulation no. 31 of 31 March 1994 approving the "Rules of Paid and Unguarded Parking of Motor Vehicles" and Regulation no. 70 of 16 April 1993 approving the "Instructions for Removing Motor Vehicles by Force and for the Use of Devices Preventing Motion".

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 Pöld at its session of 21 October 1994, with the Deputy Chancellor of Justice-Adviser Aare Reenumäe and the representative of the Tallinn City Government Heikki Ojamaa appearing, and in the presence of the secretary to the Chamber Kerdi Raud

reviewed the petition of the Chancellor of Justice no. 117 of 6 September 1994.

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

Clause 7 of the Rules of Paid and Unguarded Parking of Motor Vehicles (hereinafter "the parking rules"), approved by the Tallinn City Government Regulation no. 31 of 31 March 1994, and clauses 3 and 2 of the Instructions for Removing Motor Vehicles by Force and for the use of Devices Preventing Motion (hereinafter "the instructions for removal by force"), approved by the Tallinn City Government Regulation no. 70 of 16 April 1993, allow to lock a wheel of a motor vehicle that has been parked without a valid parking ticket or in a non-parking area in order to prevent the use of the vehicle until the driver has been identified.

On 26 May 1994, on the basis of § 142(1) of the Constitution and § 15(1) of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice proposed to the Tallinn City Government that it bring the parking rules and the instructions for removal by force into conformity with the Constitution, the Code of Administrative Offences, the Police Act, the Traffic Act and with the Traffic Code of the Republic of Estonia, approved by the Government of the Republic Regulation no. 205 of 15 July 1992.

The Tallinn City Government satisfied the proposal in part. The City Government reconciled its Regulation no. 31 and Regulation no. 70 with § 59 of the Constitution, § 3 of the Police Act, § 336 of the Code of Administrative Offences and the Traffic Code.

On the basis of § 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, on the basis of § 152(2) of the Constitution, the Tallinn City Government Regulations no. 31 and no. 70, invalid.

The Chancellor of Justice was of the opinion that the above Regulations of the City Government were 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." This constitutional right has been illegally restricted by the parking rules and the instructions for removal by force, as clause 7 of the parking rules and clauses 1 and 2 of the instructions for removal by force allow to lock a wheel of a motor vehicle in order to prevent the use of the vehicle until the driver has been identified. Clauses 1 and 2 of the Instructions for Removing Motor vehicles by Force and for the Use of Devices Preventing Motion are 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. Clause 7 gives a reason for locking a wheel of a vehicle: "until the driver has been identified", which is hardly relevant because all cars bear official licence plates and it takes no special measures to identify the owner or the user of a car. There is no justified reason to identify the driver on the spot. It follows from the aforementioned that clause 7 of the parking rules is in conflict with § 19 of the Code of Administrative Offences.

3. The parking rules are also in conflict with the general traffic arrangement in the streets and parking areas of Tallinn. Not all streets have been appropriately marked and the majority of parking areas lack additional information as for where and on what conditions it is allowed to park. Such information should comply with conditions stipulated in Supplements 2 and 3 to the Traffic Code. This requirement is not met in Tallinn. Thus, there is no legal ground for unilateral high demands for paid parking while failing to fulfil the duties of the city and for creating a situation where, for the lack of information, it is often impossible for drivers to comply with the traffic rules.

§ 5(2) of the Traffic Act provides that the condition of a road shall ensure safe and unimpeded traffic and comply with the requirements in force in the Republic of Estonia. According to § 6 of the same Act the owner or possessor of a road is required to constantly monitor the condition of the road, maintain the road in good condition and promptly remove any objects which endanger or obstruct traffic. Thus, the parking rules are inconsistent with the requirements set forth in §§ 5 and 6 of the Traffic Act.

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

At the court session the Deputy Chancellor of Justice-Adviser further specified the petition and requested that the Court declare invalid clause 1 of the Tallinn City Government Regulation no. 31 approving the parking rules and clause 1 of Regulation no. 70 approving the instructions for removal by force. The remaining clauses of the Regulations pertain to formerly valid legislation and enforcement of Regulation no. 31 of 31 March 1994.

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 Government, the Constitutional Review Chamber finds, that:

According to § 154(1) of the Constitution all local issues shall be resolved by local governments, which shall operate independently pursuant to law. Local governments are to organise parking in the territories under their authority. 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. § 32(2) of the Constitution provides that every person has the right to freely possess, use and dispose of his or her property and that restrictions to this right shall be established by law. The Tallinn City Government enacted the parking rules and the instructions for removal by force without regard to the fact that no Act gives local government representative or executive bodies the authority to prescribe for a wheel of a vehicle be locked, thus preventing the use of property (a car). Thus, the Tallinn City Government Regulations are in conflict with § 32 of the Constitution.

For the foregoing reasons the petition of the Chancellor of Justice in the specified form was justified.

On 21 October 1994 the Tallinn City Government issued Regulation no. 99, declaring invalid its Regulation no. 70 of 16 April 1993 approving the instructions for removal by force, and amending clause 7 of the parking rules approved by the Regulation of 31 March 1994, which provided for the locking of a wheel of a car until the driver has been identified. The new wording of clause 7 does not authorise the locking of the wheels.

The court can not declare the Regulations to be in conflict with the Constitution because the City Government had already brought the above Regulations into conformity with § 32 of the Constitution. The Constitutional Review Chamber confines itself to the finding that the Regulations of the City Government were 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. 117 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