



# JUDGMENT

IN THE NAME OF THE REPUBLIC OF ESTONIA

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| <b>Court</b>                             | Tartu District Court   |
| <b>Decision date</b>                     | March 27, 2024   |
| <b>Case number</b>                       | 1-23-5470  |
| <b>Court composition</b>                 | Chairman Mario Truu, members Erkki Hirsnik and Ingeri Tamm   |
| <b>Case and type of proceedings</b>      | Criminal charges against Lev Pylkin under Section 931(1) of the Criminal Code, summary procedure   |
| <b>Contested judgment</b>                | Decision of Viru County Court (Narva Courthouse) of December 4, 2023   |
| <b>Appellant</b>                         | Lev Pylkin   |
| <b>Parties to the appeal proceedings</b> | Accused<br>- Lev Pylkin, personal identification code 34804020298, residence XXX, pensioner, no criminal record, no restriction has been applied<br><br>Defender<br>- Assistant Attorney Igor Belugin (under state legal aid)<br>Prosecutor's Office<br>- Representative of State Prosecutor Alan Rüütel |
| <b>Manner of reviewing the matter</b>    | Written procedure  |

## RESOLUTION

1. The decision of the Viru County Court of December 4, 2023, shall be left unchanged and the appeal dismissed.
2. To leave the copy of the decision of the Viru County Court of December 4, 2023, copies of the inspection report of the Tax and Customs Board of May 11 and June 13, 2022, an excerpt from the legislation, and two photographs reflecting information about the border crossing point attached to the appeal as part of the materials of the criminal case.

## Appeal procedure

This decision may be challenged by the defendant's attorney. To do so, a written appeal must be filed with the Supreme Court within 30 days of the public announcement of the district court's decision.

## CIRCUMSTANCES AND PROCEEDINGS

### Accusation

1. Lev Pylkin was charged under Section 931(1) of the Penal Code (KarS). On June 13, 2022 at 1:40 a.m., the defendant attempted to travel from Estonia to Russia by car, carrying 2,560 euros in cash. The accused did not want to declare cash when crossing the border and replied that he had cash within the permitted limits. He was subjected to a customs check, during which cash was found in his jacket pocket and wallet. 2560 euros. The accused was aware that the export of euro-denominated banknotes from Estonia to Russia is not permitted. This is prohibited by the Regulation of the Council of the European Union of 1 March 2022

No 2022/345 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (hereinafter Regulation No 2022/345).

According to Article 5(1) of Regulation No 2022/345, it is prohibited to sell, supply, transfer or export banknotes denominated in euro to Russia or to any natural or legal person, entity or body located in Russia, including the Government and the Central Bank of Russia, or for use in Russia. According to Section 6 of the International Sanctions Act (RSanS), a breach of an international sanction is a failure to fulfil an obligation or a violation of a prohibition set out in the legislation implementing the international sanction. Council Regulations Nos 2022/345 and 833/2014 of the European Union are legislation establishing an international sanction within the meaning of Section 9(1) of the RSanS.

## **County court decision**

### **(a) Operative part**

2. By the decision of the Viru County Court of 4 December 2023, L. Pylkin was found guilty under Section 931 (1) - Section 25 (2) of the Criminal Code and was sentenced to a fine of 150 daily rates, or 1,785 euros, which was reduced to 100 daily rates, or 1,190 euros, pursuant to Section 238 (2) of the Code of Criminal Procedure (CCP).

### **(b) Main part**

3. It is not disputed that the accused attempted to leave Estonia for Russia on June 13, 2022, carrying cash of 2,560 euros, which was taken from him during customs control. According to witnesses AA, ML, VS and AV, the accused has repeatedly committed border crossing violations. There is a note about him that he needs to undergo a cash control because he has previously tried to take a large amount of money to Russia.  
amount of cash. The accused did not conceal the existence of the cash.
4. The prosecution's qualification is erroneous because the accused did not complete the act. The cash was exported from Estonia to Russia by crossing the Estonian state border. Pursuant to Section 9(1) and (2) of the State Border Act (RiPS), the state border is crossed when the customs authorities grant permission to a person who has passed the border control, who does not have circumstances that preclude crossing the external border, and who has fulfilled the requirements for leaving Estonia. During the border crossing, the accused was subjected to the procedures specified in Sections 64 and 65 of the Customs Act (TS). He was asked about the cash, to which he replied that he had 2,470 euros in his wallet and 90 euros in his jacket pocket, which were then taken from the accused. After that, he drove away. Therefore, the accused did not transport the cash across the external border of the European Union. When the cash was taken from the accused, he was still within the sphere of influence of the border regime within the meaning of Sections 8 and 9 of the RiPS. Therefore, he is liable for attempted criminal offences. The accused committed a failed attempt and did not give it up voluntarily, because he did not report the cash on his own initiative, but only when asked by customs.
5. What the accused said is correct in itself, that when crossing the external border of the European Union, it is not necessary to declare cash in euros if the value of the euros is less than 10,000 euros. The above is stipulated Regulation (EU) No 2018/1672 of the European Parliament and of the Council on controls of cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005. Article 3(1) of that Regulation provides that a carrier carrying cash of a value of EUR 10,000 or more must declare the cash to the competent authority of the Member State through which he enters or leaves the Union and present it to the competent authority for control. However, from March 2022, the introduction of any denomination of euro banknotes into Russia is prohibited under Article 5(1) of Regulation (EC) No 2022/345.
6. The accused denies the violation. He did not conceal the existence of the cash. According to the accused, he had extract from Regulation No. 2022/345 and he saw information at the border crossing that euros worth less than 10,000 euros could be taken from Estonia to Russia without being declared. The County Court admitted that the regulation

No. 2022/345, Article 5(2)(a) does indeed provide for such a possibility. However, the official website of the European Union ([https://finance.ec.europa.eu/system/files/2022-08/faqs-sanctions-russia-euro-banknotes\\_en.pdf](https://finance.ec.europa.eu/system/files/2022-08/faqs-sanctions-russia-euro-banknotes_en.pdf)) published that the exception specified in Article 5i, paragraph 2, point a of Regulation No. 2022/345 should be interpreted narrowly. It is intended only for the traveler and cannot be used to take cash to parents, friends or acquaintances. Only cash that covers the needs of natural persons or their family members during the trip is allowed. The same views are also stated on the website of the Tax and Customs Board (<https://www.emta.ee/eraklient/saadetised-reisimine-elama-asumine/reisimine/sularaha-deklareerimine#piirang>). The accused lives in both Estonia and Russia.

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He did not prove the travel expenses. According to witnesses AA and ML, the accused told them that he would use the cash of 2,560 euros for dental treatment. The accused did not prove this fact. He also did not provide a reasonable justification for the need to pay for dental treatment in Russia in euros, although he also had 175,000 rubles with him. In summary, the accused did not have the cash to cover the travel expenses and therefore does not fall under the exception provided for in Article 5(2)(a) of Regulation No 2022/345.

7. Based on the defendant's allegations, it is necessary to assess whether he committed a violation of the prohibition under Section 39(1) of the Penal Code. In the opinion of the court, the wording of Article 5i(2)(a) of Regulation No. 2022/345 may be misleading to persons without legal knowledge. An average reasonable person may understand this provision to mean that when traveling to Russia, he may always take euros with him for personal use. Moreover, this legal provision entered into force on 1 March 2022, having been in force for a relatively short time at the time of the defendant's act. At the same time, the defendant also tried to take cash (then 4,100 euros) from Estonia to Russia on 11 May 2022, and according to witnesses VS and AV, the prohibition of this was explained to him. An examination report was also drawn up and given to the defendant, which stated that the exception for taking euros to Russia only applies if they are for personal use to cover travel expenses. The accused was aware of Regulation No. 2022/345 on 13 June 2022 existence, and he had also been informed just a month earlier that he was not allowed to use the euros he had with him to Russia. Therefore, the accused should have understood that his action might be prohibited. He should have turned to an expert who could have explained the situation to him. The accused could also have turned to the Tax and Customs Board. In fact, the accused had suspicions about the transfer of cash about the admissibility of exporting euros from Estonia to Russia, as he stated during interrogation how his acquaintance explained to him that a natural person can take cash to Russia for personal use. The defendant's claim that the ban on exporting euros does not apply to Russian citizens is unfounded.

8. The fact that at the time of the act the information about the transfer of euros from Estonia to Russia at the border checkpoint was no longer valid is not relevant. This is because the accused did not rely on this information, as he checked the information visible at the border checkpoint only after he had returned to Estonia from Russia. Therefore, this information could not have had a misleading effect on the accused at the time of the act.

#### **POSITIONS OF THE PARTIES TO THE APPEAL PROCEEDINGS**

9. The defendant challenged the decision of the County Court, requesting a review. He considers that the customs control was not carried out correctly, because the border checkpoint stated that cash intended for personal use could be taken from Estonia to Russia. According to Article 5(2)(a) of Regulation No 2022/345, this Regulation does not apply to the taking of cash in euro to Russia that is for personal use.
10. The Prosecutor's Office did not respond to the appeal.

#### **DISTRICT COURT'S POSITION**

##### **(a) Introduction**

11. The Panel agrees with the County Court that the accused committed an attempt to violate an international sanction pursuant to Section 931 (1) - Section 25 (2) of the Criminal Code. There is no dispute regarding the factual circumstances in the present case.

On June 13, 2022, the accused attempted to transport 2,560 euros in cash from Estonia to Russia. He was subjected to a customs check, during which he revealed, in response to questions from customs officers, that he had cash in euros, and handed it over. There is also no dispute that the accused knew of the existence of Regulation No. 2022/345 at the time of the commission of the act and even had an extract from this legislation when crossing the border.

In the appeal, the defendant reiterates his consistent position throughout the proceedings that the 2,560 euros were intended for personal use, which therefore falls under the exception provided for in Article 5i(2)(a) of Regulation No 2022/345. The District Court first responds to this argument **(b)**, then explains why the accused was in avoidable error of prohibition **(c)**, then goes beyond the scope of the appeal **(d)**, focusing on the issue of a possible mitigation of the sentence and the observance of the tort structure in the contested decision. Finally, the Chamber summarises the outcome of the appeal proceedings **(e)**.

12. The accused attached to the appeal the county court decision file, copies of the inspection report of the Tax and Customs Board on May 11 and June 13, 2022, an extract from Regulation No. 2022/345, and two border checkpoints.

The District Court does not consider it necessary or possible to accept this material under Section 321(6) of the Criminal Code, because it is already in the court file (see KoTo, pp. 3 and 4, 8, 60–63 and 105 et seq.).

### **(b) Appeal by the accused**

#### **Interpretation of Article 5(2)(a) of Regulation No 2022/345**

13. The resolution of the appeal requires the interpretation of Article 5i(2)(a) of Regulation No. 2022/345. The interpretation given to this provision determines when a natural person who has taken euro banknotes from Estonia to Russia can be punished under Section 931(1) of the Penal Code. The Chamber shares the position of the County Court that the exception provided for in Article 5i(2)(a) of Regulation No. 2022/345 does not apply to the case under consideration. In finding this, the District Court also resolves the issue of compliance with the principle of determinacy of criminal law, whether the defendant's conviction and punishment were reasonably foreseeable at the time of the commission of the act.

14. Section 931 (1) of the Criminal Code provides for punishment for, among other things, violating a prohibition provided for in a legal act implementing an international sanction. This is a blanket element of the crime, which must be supplemented by other elements. prohibitions arising from legislation, the violation of which constitutes the fulfillment of the composition (see also the Criminal Chamber of the Supreme Court (RKKK) 31.05.2018, 1-16-9717/24, p. 17).

According to Section 3(1) and (3) of the RSanS, an international sanction is a foreign policy measure that may prohibit the entry of the subject of the international sanction into the country, restrict international trade and international transactions, and impose other prohibitions or obligations. Section 6 of the RSanS provides that

Violation of an international sanction is the failure to comply with an obligation or violation of a prohibition set out in the legislation implementing the international sanction listed in § 9 of the same Act. RSanS § 9 (1)

mentions a regulation of the Council of the European Union, which is also currently relevant Regulation No. 2022/345, as one of the legal acts implementing international sanctions.

15. Article 5i(1) of Regulation No 2022/345 prohibits the sale, supply, transfer or export of euro banknotes to Russia or to any natural or legal person, entity or body located in Russia, including the Government and the Central Bank of Russia, or for use in Russia. Article 5i(2)(a) of that regulation does not apply to the sale, supply, transfer or export of euro banknotes where such sale, supply, transfer or export is necessary for the purposes of the travel of natural persons or

for the personal use of close relatives traveling with them.

16. The Chamber acknowledges that Article 5(2)(a) of Regulation No 2022/345 can at first glance be understood in various ways, as this provision alone does not clearly state and remains questionable what exactly can be considered a travelling

as an expense necessary for the personal use of a natural person. This is not specified in the Mujalgi regulation. However, Article 5(2)(a) of Regulation No 2022/345 expressly refers only to natural persons *travelling* to Russia and their close relatives *travelling* with them, and that the transfer of cash to Russia must be *necessary* for the personal use of such persons. This wording alone allows us to argue that the contested provision only applies to natural persons travelling

expenses incurred by individuals for their own use during travel. Article 5i(2)(a) of Regulation (EC) No 2022/345 Without such a definition, this provision would be too vague, allowing it to include the taking of euro banknotes to Russia by a natural person travelling from Estonia to Russia for essentially any reason in their own interests, which would no longer correspond to the wording of Article 5(2)(a) of Regulation No 2022/345.

17. It is also important to note that on April 21, 2022, almost two months before the act of which the accused is alleged to have committed, the European Commission published on its official website (more details here: [https://finance.ec.europa.eu/publications/banknotes\\_en](https://finance.ec.europa.eu/publications/banknotes_en)) answers to questions regarding the application of Regulation No. 2022/345, which the County Court rightly referred to, are available to everyone.

The Commission noted that the purpose of the prohibition laid down in Article 5(1) of Regulation No 2022/345 is to prevent euro banknotes from falling into the possession of, among others, natural and legal persons present in Russia. In view of this purpose, the Commission explained that Article 5(2)(a) of Regulation No 2022/345 should be understood as meaning that the exception contained therein covers only cash covering the needs of natural persons and their close relatives during their journey to Russia. It does not cover taking cash to parents, friends or acquaintances. Thus, based on both the disputed provision itself and the explanation of the European Commission, the permissibility of taking euro banknotes to Russia by a natural person can be determined, which also allows determining the scope of punishment of Section 931(1) of the Penal Code. Similar positions on the interpretation of Article 5i(2)(a) of Regulation No. 2022/345 are also provided on the website of the Tax and Customs Board referred to by the county court (see paragraph 6 of this decision).

18. In the present case, it can be said beyond reasonable doubt that the accused's 2,560 euros in cash were not intended for mere travel expenses and are therefore not covered by Article 5(2)(a) of Regulation No 2022/345. The County Court established, based on the accused's statements, that he lives in both Estonia and Russia. The defendant's claim that he was supposed to use the 2,560 euros in cash for dental treatment in Russia has not been proven and even if something like this had been established, it would not have been covered by Article 5(2)(a) of Regulation No 2022/345, as it would not be possible to consider it as a personal expense related to the travel of a natural person travelling in the present case. Furthermore, the defendant has not proven in any way that he covered the travel expenses with the cash in question (see page 6, paragraph 8 of the County Court's decision, see also KoTo, paragraph 56).

### **Foreseeability of criminal liability**

19. The panel will next resolve the question of whether the interpretation given to Article 5i(2)(a) of Regulation No 2022/345 and, consequently, his prosecution and punishment were reasonably foreseeable to the accused at the time of the commission of the act. The principle of determinacy or foreseeability of criminal law follows from Article 23(1) of the Constitution and Article 2(1) of the Penal Code, as well as from Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 49(1) of the Charter of Fundamental Rights of the European Union. This principle requires, inter alia, that the act for which the law provides for a penalty must be clearly defined. This requirement has been met if the person understands from the wording of the relevant penal provision, if necessary with the help of the interpretation given to that provision by the court, what conduct is prohibited and punishable (see, for example, since RKÜK 21.06.2011, 3-4-1-16-10, pd 49 and 50, see also RKKK 09.11.2017, 1-16-5792/101, pd 12 and since ECHR 25.05.1993, *Kokkinakis v. Greece*, paragraph 52, also ECtHR 25.06.2009, *Liivik v. Estonia*, paragraphs 92 and 93).

20. The Supreme Court has repeatedly stated that the formulation of a penal provision in a manner that requires interpretation does not necessarily mean that it is unconstitutional. The principle of legal clarity does not exclude undefined

the use of legal concepts (see e.g. RKKK 16.06.2023, 1-21-5633/135, p. 72 with reference). At the same time, the Supreme Court has also explained that the elements of an offence must be interpreted in a way that allows everyone to foresee which behaviour is prohibited and punishable, so that they can shape their behaviour accordingly (see e.g. RKKK 09.11.2018, 1-17-6580/138, p. 12 with reference). The case law of the European Court of Human Rights (ECHR) has also repeatedly stated that provisions providing for criminal liability may contain vague concepts that the court must interpret in order to gradually to make it clearer. However, it is important that the interpretation given by the court is in accordance with the essence of the crime and reasonably foreseeable for the person (see, for example, ECHR 25.06.2009, *Liivik v. Estonia*, paragraph 94). with references, see also RKKK 20.11.2015, 3-1-1-93-15, p. 96). Since the provision that forms the basis of a blank criminal offence is essentially an integral and full part of such a component (see, for example, RKKK 08.06.2016, 3-1-1-55-16, p. 9 with reference), such a provision must also be interpreted in a way that ensures compliance with the principle of definiteness.

**21.** The following positions of the ECtHR are also worth noting. The foreseeability of the punishability of an act must be assessed precisely at the time of the act (see, for example, ECtHR 12.07.2007, *Jorgic v. Germany*, paras 111–114; 06.03.2012 *Huhtamäki v. Finland*, p 51; 04.10.2016, *Žaja v. Croatia*, p 102–105 and 03.12.2019, *Parmak and Bakir v. Turkey*, p 62 and 63). In other words, the principle of determinacy has been observed only if the conviction and punishment were reasonably foreseeable at the time of the commission of the act. Only in this way is arbitrary criminal liability excluded. This also means that the interpretation given by the court to the relevant penalty provision must also be foreseeable at the time of the commission of the act. This position has also been essentially adopted by the Supreme Court (see RKKK 20.11.2015, 3-1-1-93-15, p 97). In addition, the ECHR has considered when assessing foreseeability

important is whether the person could reasonably have foreseen his or her own conviction and punishment if he or she had used legal aid (see, for example, ECHR 11.11.1996, *Cantoni v. France*, § 35; 29.03.2006, *Achour v. France*, § 54; 12.07.2007, *Jorgic v. Germany*, § 113 and 15.07.2014, *Ashlarba v. Georgia*, p 40).

**22.** Therefore, in view of the present case, the question to be resolved is whether it should have been reasonably foreseeable to the accused at the time of the commission of the act that he could be held liable under Section 931(1) of the Penal Code. In answering this question, it must also be taken into account whether this would have been foreseeable by using legal aid. The Panel finds that these questions should be answered in the affirmative for the following reasons.

**23.** First, the accused must have already been, based on the wording of Article 5(2)(a) of Regulation No 2022/345 It can reasonably be understood that this only covers personal expenses incurred for the purpose of travel by natural persons travelling and close relatives travelling with them. Secondly, at the time of the commission of the act, the accused was aware of the prohibition in Article 5(1) of Regulation No 2022/345 and the exception provided for in Article 2(a). On 11 May 2022, i.e. approximately one month before the case under consideration, he was subject to a customs inspection, during which it was revealed that the accused was carrying 4,100 euros in cash. The prohibition was explained to the accused (KoTo, sections 8, 47 and 52). An inspection report was also drawn up, referring to Article 5(1) of Regulation No 2022/345 and given to the accused. This act explicitly states that “[t]herefore, the export of euros to the Russian Federation is prohibited, except for the export of euros for personal purposes in an amount that covers the needs of the person and the family traveling with him during the trip” (KoTo, tl 8). Furthermore, the accused had the opportunity to read from a public source the explanation of the European Commission on Article 5i, paragraph 2, point a, of Regulation No 2022/345

(see paragraph 17 of this decision), which moreover coincides with what was stated in the inspection report conducted on the accused on 11 May 2022. The accused was also able to obtain this information from the Tax and Customs Board. It can also be said that the accused would have learned that his transfer of 2,560 euros in cash from Estonia to Russia is prohibited and punishable by using professional legal assistance.

**24.** In conclusion, the Panel finds that the exception provided for in Article 5(2)(a) of Regulation No 2022/345 cannot be invoked in the present case and that it was reasonably foreseeable to the accused at the time of the commission of the act,

that what he is doing is prohibited and he may be punished for it. Therefore, what is said in the appeal does not require the contested decision to be changed.

**(c) The question of a mistake of prohibition**

25. The appeal shows that the accused continues to be convinced of the permissibility of his act. He expressed this both during the pre-trial hearing (KoTo, tl 56) and in the County Court (KoTo, tl 94 pd). Therefore, the question of the accused's possible error of prohibition and its avoidability or inevitability within the meaning of § 39 of the Criminal Code has arisen. The County Court found that the accused was in an avoidable error of prohibition at the time of committing the act (see pages 6–8 of the decision, p. 9). The Panel shares this position and does not consider it necessary to repeat all the considerations of the County Court pursuant to § 342 (3) (1) of the Criminal Code, explaining the following.

26. Despite the fact that the accused should have reasonably understood that his act was prohibited (see paragraphs 23 and 24 of this decision), the panel nevertheless finds that he erred in law. The accused knew of the existence of the prohibiting legal provision, namely Article 5(1) of Regulation No. 2022/345, but misunderstood it, mistakenly considering his act to be lawful due to the provisions of Article 5(2)(a) of Regulation No. 2022/345, although such an act was prohibited (see also RKKK 10.10.2014, 3-1-1-46-14, p. 17.1). Although the accused

should have learned about the prohibition of taking cash in euros to Russia at the customs inspection on May 11, 2022 and from the inspection report handed to him, he took an extract from Article 5 of Regulation No. 2022/345 with him to the border crossing on June 13, 2022, finding on this basis that his act was not prohibited. This is clear from the statement of the accused during the interrogation: "Before the trip, I took a copy of the European Union regulation, which shows that this regulation does not apply to natural persons who are citizens of the Russian Federation, I live in both Estonia and St. Petersburg. I took this printout with me to the border crossing [-] I explained that I also have cash in excess of 2,000 euros with me and I also have a printout of the Council of the European Union regulation with me, which shows that the prohibition of transferring cash does not apply to me" (KoTo, p. 55). Therefore, it can be said that the accused did not understand the prohibition of his act.

27. A person who is guilty of a prohibited act is not guilty under Section 39(1) of the Penal Code only if the act was committed by him/her unavoidable. The Supreme Court has explained that the question of the avoidability of the mistake always arises in the case of a mistake of prohibition. To do this, it must be determined how carefully the person who made the mistake approached the legal system and whether he or she did everything necessary and possible to clarify the prohibition of the relevant act.

In other words, it is necessary to assess how clearly the need to question the legality of one's own conduct or to take steps to verify it *ex ante* would have been apparent to an objective, reasonable bystander with similar knowledge and life experience to the perpetrator. This largely depends on the nature of the act. In particular, it must be assessed whether he had objective reason to doubt the legality of the act.

Usually, a mistake in prohibition is avoidable. For example, this is the case if the prohibition of an act is obvious. Generally, a person acting in a certain field must also recognize the prohibition of his act: he must make the rules of that field clear to himself. Also, the person who made the mistake can often be criticized for not contacting, for example, a legal advisor or some other specialist. It has also been found that the less intense the damage or threat caused by the behavior of the person acting in a mistake in prohibition to the benefit protected by the prohibition norm, the less reason there is to assume that the person should have doubted the legality of his act. It is also important to what extent the act can recognizably damage or threaten the benefit or goal protected by the violated legal norm. (See RKKK 27.09.2022, 1-21-

7336/33, paragraphs 15 and 16.)

28. The Panel finds that the accused's mistake was avoidable. He was aware of the prohibition in Article 5(1) and the exception in Article 2(a) of Regulation No 2022/345, and he was subjected to a customs inspection only about a month before 13 June 2022, and the accused was given an inspection report with the explanation that a natural person may bring cash in euros to Russia only to cover his own and his family's needs during the trip. Although the accused was aware of the existence of Article 5(2)(a) of Regulation No 2022/345 and was aware of the

this provision was also explained, he did not do anything after 11 May and before 13 June 2022 to reliably ascertain the scope of the disputed provision. He must have had and in fact did have doubts about what this provision specifically meant, which is indicated, among other things, by the findings of the county court, how the accused allegedly learned from an acquaintance in which cases a natural person may take cash to Russia (see page 7 of the decision). At the same time, the accused did not turn to any experts or inquire with the Tax and Customs Board or the European Commission website (see paragraphs 17 and 23 of this decision) to obtain clarification on this, although this would have been expected if, despite the customs inspection and inspection report carried out on 11 May 2022, he doubted the prohibition of his act. The accused should have been more careful to make sure, before he next takes cash in euros to Russia, whether and in which cases such an act is prohibited and punishable as a violation of international sanctions. Despite this, the accused decided to take cash with him again when going to Russia. On 13 June 2022, this amount was 2,560 euros, which, in the opinion of the panel, cannot be considered insignificant in view of the purpose of the prohibition in Article 5i(1) of Regulation No 2022/345 (see also paragraph 17 of this decision). The accused already spoke in the pre-trial proceedings and also reiterated in the appeal that according to the information at the border crossing point, it was possible to take (less than 10,000 euros) to Russia.

cash (see KoTo, pp. 55 and 56). The Panel agrees with the County Court that this could not have had a misleading effect on the accused at the time of the act, because he only became aware of this information later, after he had returned to Estonia from Russia (see pp. 7–8 of the County Court decision and KoTo, pp. 55 and 56). In summary, it was clearly recognizable to the accused at the time of the act that his act was prohibited and that he might violate an international sanction, which means that we can speak of an avoidable error of prohibition.

#### **(d) Outside the scope of the appeal**

##### **Possible reduction of punishment**

- 29.** Since the accused's act was limited to an attempted crime and he was in an avoidable violation of the prohibition, pursuant to § 25 (6) and § 39 (2) of the Penal Code, the court must consider the possible mitigation of the sentence under § 60 of the Penal Code (see, for example, RKKK 20.10.2016, 3-1-1-70-16, p. 13). Although mitigation of the sentence pursuant to § 60 of the Penal Code is not mandatory, the court must separately justify its failure to do so (see also RKKK 20.06.2022, 1-20-6745/88, p. 58). The contested decision does not show that the county court had considered mitigating the sentence. The court only noted that “[i]f the act was committed in an avoidable violation of the prohibition, the guilt of the perpetrator is less pursuant to § 39 (2) of the Penal Code” (see page 8, p. 12 of the decision). However, this also concerned the assessment of the extent of the accused's guilt, not whether to base the sentence on the range of sentences provided for in Section 931(1) of the Penal Code or to reduce the upper and lower limits of the sentence in accordance with Section 60 of the Penal Code. The panel can eliminate the noted deficiency itself.
- 30.** Although the application of Section 60 of the Penal Code must be assessed in the case under consideration both for the attempted offence and for the avoidable violation of the prohibition, there are no circumstances in the accused's act that would require a mitigation of the sentence. The accused carried a considerable amount of cash with him when he went to Russia, i.e. 2,560 euros. and he failed to complete the act only because he was subjected to a customs check, during which he handed over the cash upon questions from customs officials (see also KoTo, tl 45). The accused did everything in his power to transfer the cash from Estonia to Russia and he would undoubtedly have succeeded in doing so without the intervention of customs officials. Such circumstances of the commission of the crime and the reason why the act was not completed do not allow for the mitigation of the accused's sentence under Section 25 (6) of the Penal Code. (see also RKKK 20.10.2016, 3-1-1-70-16, p. 14). The fact that the accused made an avoidable mistake regarding the prohibition does not lead to a reduction in the sentence. Considering that the accused already tried to take 4,100 euros from Estonia to Russia on May 11, 2022, after which the customs control explained to him that it was prohibited and an inspection report was drawn up, which stated in which cases euro cash can be taken to Russia, the accused's mistake regarding the prohibition of the act on June 13, 2022 was easily avoidable. He could have finally convinced himself that the act was prohibited, for example, by communicating with the Tax and Customs Board. In addition, it is worth mentioning that the county court did not establish the accused's punishment



mitigating circumstances within the meaning of Section 57 of the Penal Code. Based on the above considerations, the panel does not consider it justified to mitigate the sentence on the basis of Sections 25(6) and 39(2) of the Penal Code.

### **Following the tort structure**

**31.** The county court erroneously resolved the issue of the error of prohibition and the abandonment of an attempted offence before it had determined the constituent elements and illegality of the act. According to Section 2(2) of the Penal Code, a person is punished for a constituent element, an illegality and a wrongful act. This is called the three-stage tort structure, which sets specific requirements for the methodology for resolving the question of guilt (see RKKK 08.05.2019, 4-18-3732/22, p. 10). When verifying the existence or absence of a punishable act, one must start with the constituent elements of the offence (Section 12 of the Penal Code), identifying the subjective and objective components of the offence in the case of an attempted act. Then, the illegality can be checked (Penal Code § 27 et seq.) and only when both the composition and illegality have been established, it is possible to assess guilt (Penal Code § 32 et seq.), including the prohibition error and its inevitability as a circumstance excluding guilt (Penal Code § 39) and the abandonment of the attempted offence (Penal Code § 40 et seq.). Thus, the county court did not act correctly when it analyzed the possible prohibition error and abandonment of the attempted offence without first establishing the intention of the accused and the illegality of the act he was charged with (see page 5, paragraph 7, pages 6–8, paragraph 9 and page 8, paragraph 11 of the county court decision). In this regard, it does not appear from the decision that the court had focused on the illegality of the act at all. However, the above does not require the annulment or amendment of the judgment, because it does not affect the substantive positions regarding the defendant's guilty plea, and in addition, it is also clear that there are no circumstances that exclude the unlawfulness of his act.

### **(e) Summary**

**32.** For the above reasons and guided by § 337 (1) (1) of the Criminal Code, the Tartu Circuit Court reserves the right to  
The decision of the County Court of December 4, 2023, was not changed and the appeal was not granted.

Mario True

Erkki Hirsnik

Ingeri Oak

(digitally signed)