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Home > Constitutional judgment 3-3-1-63-05

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## Constitutional judgment 3-3-1-63-05

### JUDGMENT OF THE GENERAL ASSEMBLY OF THE SUPREME COURT

**No. of the case** 3-3-1-63-05

**Date of judgment** 6 December 2006

**Composition of court** Chairman Märt Rask and members Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Julia Laffranque, Jaak Luik, Jüri Pöld, Harri Salmann and Tambet Tampuu

**Court Case** Appeal of Beate Bodemann and Thomas Bodemann for the invalidation of decision No 12421 of the Tallinn City Committee for Return of and Compensation for Unlawfully Expropriated Property of 19 August 2002

**Disputed judgment** Judgment of Administrative Law Chamber of Tallinn Circuit Court of 8 July 2005 in administrative matter No 2-3/24/05

**Complainant and the type of appeal** Appeal in cassation of Beate Bodemann and Thomas Bodemann

**Hearing of matter** Continuation of proceeding by way of written procedure

## DECISION

**1. To allow the appeal in cassation of Beate Bodemann and Thomas Bodemann and to annul the judgments of Tallinn Administrative Court of 30 May 2003 in administrative matter No 3-278/2003 and of Tallinn Circuit Court of 8 July 2005 in administrative matter No 2-3/24/05.**

**2. To render a new judgment allowing the appeal of Beate Bodemann and Thomas Bodemann for the invalidation of decision No 12421 of the Tallinn City Committee for Return of and Compensation for Unlawfully Expropriated Property of 19 August 2002. To annul decision No 12421 of the Tallinn City Committee for Return of and Compensation for Unlawfully Expropriated Property of 19 August 2002.**

**3. To return the security on cassation.**

## FACTS AND COURSE OF PROCEEDING

**1.** At its session of 14 February 2006 the general assembly of the Supreme Court heard the appeal in cassation of B. Bodemann and T. Bodemann, and on 12 April 2006 rendered a partial judgment in administrative matter No 3-3-1-63-05, declaring § 7(3) of the Republic of Estonia Principles of Ownership Reform Act (hereinafter “PORA”) invalid and stipulating that the relevant part of the resolution shall enter in force on 12 October 2006 on the condition that an Act amending or invalidating the referred provision has not entered into force.

**2.** The general assembly considered the resolution of the appeal in cassation of B. Bodemann and T. Bodemann possible only when it becomes clear which substantive law should be applied to the dispute. At the time of rendering the judgment of 12 April 2006 the general assembly lacked such clarity. That is why the general assembly decided to continue the proceeding of the appeal in cassation of B. Bodemann and T. Bodemann after § 7(3) of the PORA has either been amended or declared invalid (see judgment of the general assembly of 14 April 2006 in administrative matter No 3-3-1-63-05, RT III 2006, 13, 123, § 33).

## OPINION OF THE GENERAL ASSEMBLY

### I.

**3.** On 14 September 2006, with the aim of executing the judgment of the general assembly of the Supreme Court of 12 April 2006, the Riigikogu passed an Act declaring § 7(3) of Republic of Estonia Principles of Ownership Reform Act invalid; on 20 September 2006 the President of the Republic refused to proclaim the Act. On 27 September 2006 the Riigikogu again passed the Act, unamended. On 4 October 2006, on the basis of § 107 of the Constitution, the President of the Republic proposed to the Supreme Court that it declare the Act, passed on 27 September 2006, declaring § 7(3) of Republic of Estonia Principles of Ownership Reform Act invalid, unconstitutional. Thus, the referred Act has not yet entered into force.

**4.** Pursuant to the judgment of the general assembly of the Supreme Court of 12 April 2006, § 7(3) of PORA is to be considered invalid as of 12 October 2006, because an Act amending or annulling § 7(3) of PORA has not entered into force.

**5.** The general assembly is of the opinion that that the consequence of the invalidity of § 7(3) of PORA is that the unlawfully expropriated property which was in the ownership of persons who resettled to Germany on the basis of an agreement entered into with the German state is to be returned, compensation for or privatised to the lessees pursuant to the general principles and the general procedure established by the

Republic of Estonia Principles of Ownership Reform Act. This legal clarity enables the general assembly to continue the proceeding of the appeal in cassation of B. Bodemann and T. Bodemann.

**6.** As the participants in the proceeding were heard at the session of 14 February 2006, the general assembly considers it possible to continue the hearing of the matter by way of written procedure.

## **II.**

**7.** The litigation was prompted by the fact that by decision No 12421 of 19 August 2002 the Tallinn City Committee for Return of and Compensation for Unlawfully Expropriated Property (hereinafter “the city committee”) quashed the decisions of the same committee No 1272 of 22 November 1993 and No 1272/186 of 28 February 1994, by which the building and the plot at 11 Wiedemanni Street, Tallinn, were declared an object of ownership reform and U. Hamburg, whose mother J. Hamburg was the owner of the said building at the time of its unlawful expropriation in 1994, was declared an entitled subject of the ownership reform.

In 2002 the city committee quashed its decisions of 1993 and 1994 because J. Hamburg, the former owner of the unlawfully expropriated building, had left Estonia on the basis of an agreement entered into between the USSR and the German state on 10 January 1941. The city committee based the contested decision on § 7(3) of PORA, which established that the unlawfully expropriated property which was in the ownership of persons who left Estonia on the basis of agreements entered into with the German state was to be the returned or compensated for solely on the basis of an international agreement (see judgment of the general assembly of 12 April 2006 in administrative matter No 3-3-1-63-05, RT III 2006, 13, 123, § 20).

**8.** There is no dispute that at the time of unlawful expropriation the owner of the building and plot at 11 Wiedemanni Street, Tallinn, was U. Hamburg’s mother J. Hamburg, who had left Estonia on the basis of an agreement entered into between the USSR and the German state on 10 January 1941. These facts are material for the adjudication of the matter.

**9.** As there is no dispute over the facts material for the adjudication of the matter and the contested decision of the city committee is based on § 7(3) of PORA, declared invalid by a court judgment because of its unconstitutionality, the general assembly shall, on the basis of § 72(1)4) of the Code of Administrative Court Procedure, render a new judgment without referring the matter to the Circuit Court for a new hearing. The general assembly hereby allows the appeal in cassation of B. Bodemann and T. Bodemann and annuls the judgments of the Administrative Court and the Circuit Court as well as decision No 12421 of the city committee of 19 August 2002. Thus, the decisions of the city committee No 1272 of 22 November 1993 and No 1272/186 of 28 February 1994 in their conjunction shall remain in force.

Märt Rask, Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Julia Laffranque, Jaak Luik, Jüri Põld, Harri Salmann, Tambet Tampuu

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