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Home > Constitutional judgment 3-4-1-2-99

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## Constitutional judgment 3-4-1-2-99

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### JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

of 17 March 1999

#### **Review of the petition of the Tallinn Administrative Court to declare invalid §§ 1(3) and 15(3) of the Legislation Relating to Ownership Reform Act Amendment Act.**

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Uno Lõhmus and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Ants Kull and Jüri Põld, at its open session of 3 March 1999, with the representative of the Riigikogu Mati Meos, Chancellor of Justice Eerik-Juhan Truuväli and the representative of the Minister of Justice Priidu Pärna appearing, and in the presence of the secretary to the Chamber Piret Lehemets reviewed the petition of the Tallinn Administrative Court of 22 January 1999.

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

On 23 December 1991 Karin Maria Salm filed an application with Tallinn City Assets Board for the return of unlawfully expropriated property situated at Paldiski Road 6, Tallinn. By its decision of 11 May 1998 the Tallinn committee for return of and compensation for unlawfully expropriated property (hereinafter “the Tallinn committee”) did not satisfy the application of K. M. Salm on the grounds that she did not belong to the circle of entitled subjects of the ownership reform, enumerated in § 8 of the Principles of the Ownership Reform Act. K. M. Salm filed a complaint with the Central Committee for Return of and Compensation for Unlawfully Expropriated Property, which dismissed the complaint. Then K.M. Salm contested the decision of the Tallinn committee in the Tallinn Administrative Court.

According to the judgment of the Tallinn Administrative Court of 22 January 1999 K.M. Salm had filed an application for the return of unlawfully expropriated property on the basis of § 8(3)2) of the Principles of Ownership Reform Act, as a spouse of the child of a former owner, because the child of the former owner was dead. This provision of the Principles of Ownership Reform Act was amended by § 1(3) of the Legislation Relating to Ownership Reform Act Amendment Act, and the words “the spouse of the child of the former owner if the child of the former owner is dead (regardless of the date of death)” were omitted from clause 2) of the provision. Pursuant to § 15(5) of the Legislation Relating to Ownership Reform Act

Amendment Act the amendment to § 8(3)2) of the Principles of Ownership Reform Act shall not be applied to the spouse of the child of the former owner who has already been declared an entitled subject. As the decision to declare K. M. Salm an entitled subject of the ownership reform had not been made before the referred Act became effective, the Tallinn committee, when making its decision of 11 May 1998, proceeded from the new wording of § 8(3)2) of the Principles of Ownership Reform Act, and did not satisfy the application of K.M. Salm.

The Tallinn Administrative Court did not apply § 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act because of the conflict thereof with §§ 10 and 12 of the Constitution. The court declared illegal the part of the contested decision by which the application of K.M. Salm was dismissed on the grounds that the applicant did not belong to the group of entitled subjects of ownership reform referred to in § 8 of the Principles of Ownership Reform Act. According to the reasoning of the court judgment, upon filing the application for return of unlawfully expropriated property K.M. Salm had acted pursuant to then effective Principles of Ownership Reform Act and legislation issued pursuant to the Act. Proceeding from § 10 of the Constitution the principles of legal certainty and legitimate expectation are valid in Estonia, pursuant to which everyone is entitled to act in reasonable expectation that the applicable law will remain in force. For the purposes of § 4 of the Principles of Ownership Reform Act K.M. Salm is an entitled subject of ownership reform, who exercised her legal right to claim the return of unlawfully expropriated property under § 8(3)2) of the Principles of Ownership Reform Act, when filing the application on 23 December 1991. § 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act categorises the entitled subjects referred to in § 4 into persons in regard of who administrative act recognising them as entitled subjects of ownership reform have been issued, and into persons in regard of who such decision was not made prior to the Act entered into force. The time limits for examining the applications have not been established and it does not depend on the applicant how long it will take a local committee for the return of and compensation for unlawfully expropriated property to come to a decision to declare an applicant an entitled subject. Thus, by the amendments to the Act the entitled subjects were put into an unequal situation, by which the principle of equal treatment stipulated in § 12 of the Constitution was violated.

Proceeding from § 5(2) of the Constitutional Review Court Procedure Act the Tallinn Administrative Court filed a petition with the Supreme Court on 22 January 1999 to declare §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act invalid because of their conflict with §§ 10 and 12 of the Constitution.

At the session of the Constitutional Review Chamber of the Supreme Court the representative of the Riigikogu argued that §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act were not in conflict with §§ 10 and 12 of the Constitution. A person's right of claim against the state is created when a local commission has, on the basis of an application and supplementary documents submitted, declared a person an entitled subject. The legitimate expectation of such persons is guaranteed by § 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act. The principles of legal certainty, legitimate expectation and equal treatment need not have priority in case of Acts concerning reforms.

Pursuant to the opinion of the Chancellor of Justice §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act are in conflict with § 10 of the Constitution, because these violate the principles of legal certainty and legitimate expectation. The Chancellor of Justice agreed also with the opinion of the Tallinn Administrative Court that the referred provisions were in conflict with § 12 of the Constitution, which guarantees that everyone is equal before the law.

The representative of the Minister of Justice argued that the contested provisions were not in conflict with §§ 10 and 12 of the Constitution, nevertheless a question may arise whether the administrative activities of the local government were constitutional, as the application was not examined within a reasonable time.

Having examined the materials submitted and having given a fair hearing to the representative of the Riigikogu, to the Chancellor of Justice and to the representative of the Minister of Justice, **The Constitutional Review Chamber found:**

## I.

§ 8(3) of the Principles of Ownership Reform Act (in the wording in force since 13 April 1994) established that if a former owner of unlawfully expropriated property is deceased and there is no will or the will fails to comply with the requirements of § 8(2), or if the will does not include all of the unlawfully expropriated property, or if the testate successor (successors) is (are) deceased, the following persons are entitled subjects of ownership reform with regard to the unlawfully expropriated property in whole or to the extent of the property which is not specified in the will: spouses of children of the former owner, if the former owner is dead (regardless of the date of death), and grandchildren and other descendants of the former owner if their parent is dead (regardless of the date of death) in equal shares; however, they are only entitled to claim return of or compensation for the property to which their spouse or parent would have been entitled.

§ 8(3)2) of the Principles of Ownership Reform Act was amended by § 1(3) of the Legislation Relating to Ownership Reform Act Amendment Act, and the words “spouses of children of the former owner, if the former owner is dead (regardless of the date of death)” and “spouse or” were omitted from the provision.

§ 15(5) of the same Act established that the amendment to § 8(3)2) of the Principles of Ownership Reform Act shall not be applied to spouses of children of the former owner who have already been declared entitled subjects.

The referred amendments became effective as of 2 March 1997. Consequently, proceeding from §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act, in case of death of a child of the former owner the spouse of the child of the former owner is no longer entitled to require the return of or compensation for the unlawfully expropriated property, if he or she was not declared an entitled subject of ownership reform by the county or city committee for the return of and compensation for unlawfully expropriated property before 2 March 1997.

## II.

The Constitutional Review Chamber of the Supreme Court adheres to its opinion expressed in the judgment of 30 September 1998 that as the Constitution of the Republic of Estonia Implementation Act does not make exceptions in regard to ownership reform Acts, then proceeding from § 3(1) of the Constitution also Acts regulating ownership reform and amendments thereto must be in accordance with the Constitution.

It is stipulated in § 10 of the Constitution that the rights, freedoms and duties set out in Chapter II of the Constitution shall not preclude other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and conform to the principles of human dignity and of a state based on social justice, democracy, and the rule of law. Legal certainty and legitimate expectation are among the principles of a state based on the rule of law. These principles give rise to everyone's legitimate expectation that what has been promised by a law shall be applied towards persons who have started to exercise their rights. An Act which violates a right is in conflict with the Constitution (see also the judgment of the Constitutional Review Chamber of 30 September 1994 - RT I 1994, 66, 1159, and of 30 September 1998 - RT I 1998, 86/87, 1434).

According to § 16(1) of the Principles of Ownership Reform Act the entitled subjects of ownership reform had the right to submit applications for the return of or compensation for unlawfully expropriated property up to 17 January 1992. According to the Act entitled “On the procedure for reinstatement of limitation period for filing applications upon the return of and compensation for unlawfully expropriated property” those entitled subjects whose application was not filed within the established limitation period had the right to request that the Central Committee for the Return of and Compensation for Unlawfully Expropriated

Property reinstate the limitation period for filing applications. Applications for reinstatement of limitation period for filing applications were received up to 31 March 1993.

Persons entitled to request the return of or compensation for unlawfully expropriated property who filed their applications for the return of or compensation for unlawfully expropriated property in due time or in regard to who the limitation period was reinstated had the grounds to expect, in accordance with the principles of legal certainty and legitimate expectation, that the decision as to whether they will be declared entitled subjects of ownership reform shall be made pursuant to the law in force when the applications were filed. By filing the applications these persons started to exercise their right to claim the return of or compensation for unlawfully expropriated property, given to them by the law, and they had reasonable expectation that this right will not be taken away unjustifiably.

For the above reasons § 1(3) of the Legislation Relating to Ownership Reform Act Amendment Act is in conflict with § 10 of the Constitution.

The fact that § 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act provides that the referred amendment shall not be applied to spouses of children of former owners who have already been declared entitled subjects of ownership reform, means that the legislator has violated the principle of § 12(1) of the Constitution, pursuant to which it is necessary to guarantee that everyone is equal before the law. By §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act the persons who had started to exercise their subjective right pursuant to prescribed procedure by filing applications for the return of or compensation for unlawfully expropriated property, were categorised into persons whose applications were examined and in regard to who the decision recognising the right of claim was made before 2 March 1997, and into persons in regard of who the decision to recognise their right of claim was not made by that date. Those persons whose subjective right was recognised by an administrative act before the referred date can exercise the right given by § 8(3)2) of the Principles of Ownership Reform Act which was in force when they submitted their applications. The persons in regard to who the acts recognising their right of claim were not issued before the referred date were deprived of the right promised by the law. Consequently, contrary to the principle of equal treatment, the legislator has failed to apply the principles of legal certainty and legitimate expectation to some of the persons who have started to exercise their right to claim the return of or compensation for unlawfully expropriated property.

Due to the fact that §§ 1(3) and 15(5) of the Legislation Relating to Ownership Reform Act Amendment Act violate the principles of legal certainty and legitimate expectation, these provisions are in conflict with §§ 10 and 12 of the Constitution.

Proceeding from § 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 of the Tallinn Administrative Court and to declare §§ 1(3) and 15(3) of the Legislation Relating to Ownership Reform Act Amendment Act, passed on 29 January 1997, invalid.**

The judgment is effective from the date of pronouncement, is final and is not subject to further appeal.

U. Lõhmus  
Chairman of the Constitutional Review Chamber

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