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JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT of 12 April 1995

Review of the petition of the Tartu Administrative Court for the declaration of invalidity of § 7(2) of the Republic of Estonia Principles of Ownership Reform Act.

On 29 March 1995, the Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Rait Maruste and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld with the representative of the Riigikogu Liina Tõnisson and the Chancellor of Justice Erik-Juhan Truuväli appearing, and in the presence of the secretary to the Chamber Külli Aren reviewed the petition arising from the judgment of the Tartu Administrative Court of 3 February 1995, seeking to declare § 7(2) of the Republic of Estonia Principles of Ownership Reform Act invalid.

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

On 29 September 1994 the Tartu City Government committee for return of and compensation for unlawfully expropriated property took a decision not to recognise Helga Redi (* 1992) as an entitled subject in regard to unlawfully expropriated (nationalised) property, because her father Herbert Blumenthal, the owner of this property, had not been Estonian citizen on 16 June 1940. H. Redi's daughter Nives Lepp filed an appeal against this decision with the Tartu Administrative Court. The Tartu Administrative Court was of the opinion that the decision of the referred Committee was in conformity with § 7(2) of the Principles of Ownership Reform Act, but the latter provision itself was not in conformity with § 32 of the Constitution, pursuant to which the right of succession is guaranteed. The observance of this constitutional provision would require that Estonian citizens have the right to inherit unlawfully expropriated property of ancestors who were not Estonian citizens. On 3 February 1995, on the basis of the foregoing the judge of the Tartu Administrative Court, resolving administrative case no. 1-3-4/95, declared § 7(2) of the Principles of Ownership Reform Act unconstitutional and did not apply it.

The representative of the Riigikogu and the Chancellor of Justice were of the opinion that § 7(2) of the Principles of Ownership Reform Act was not in conflict with § 32(4) of the Constitution.

Having examined the documents submitted and having given a fair hearing to the representative of the Riigikogu and the Chancellor of Justice, the Constitutional Review Chamber finds:

§ 7(2) of the Principles of Ownership Reform Act provides: "Applications for return of or compensation for unlawfully expropriated property which was in the ownership of foreign states, legal persons and citizens of foreign states and stateless persons, except for persons specified in clauses (1) 1)–4) and 7) of this section, and which was located in the Republic of Estonia are resolved by an agreement between the Republic of Estonia and the corresponding state." The referred clauses of § 7(1) enumerate persons who are entitled to claim the return of or compensation for unlawfully expropriated property. According to § 7(1)3) among such persons are also the persons who are successors for the purposes of and under the conditions provided for in § 8 of this Act. Pursuant to § 7(1)5) and 6) of the Principles of Ownership Reform Act, in addition to persons stipulated in clauses 1) to 4) of § 7(1), also local government and the Republic of Estonian are entitled to claim return of or compensation for unlawfully expropriated property. Thus, all persons who have the right to claim the return of or compensation for unlawfully expropriated property have been enumerated in § 7(1) of the Act. Persons, who have not been enumerated in this provision, have no right to claim the return of or compensation for the unlawfully expropriated property on the basis of this Act.

§ 7(2) of the Principles of Ownership Reform Act does not deprive anyone of the right to claim the return of or compensation for the unlawfully expropriated property. This provision only establishes the rule that applications for return of or compensation for unlawfully expropriated property which was in the ownership of foreign states, legal persons and citizens of foreign states and stateless persons and which was located in the Republic of Estonia are resolved by an agreement between the Republic of Estonia and the corresponding state, except when the persons are entitled subjects of ownership reform on the basis of clauses 1) to 4) of § 7(1) of the Act. Thus, § 7(2) of the Principles of Ownership Reform Act can not be in conflict with § 32(4) of the Constitution, which establishes that the right of succession is guaranteed.

Thus, the petition of the Tartu Administrative Court for the declaration of unconstitutionality of § 7(2) of the Principles of Ownership Reform Act is groundless and shall be dismissed.

Proceeding from the above and pursuant to § 19(1)1) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

to dismiss the petition of the Tartu Administrative Court of 3 February 1995 for the declaration of invalidity of § 7(2) of the Republic of Estonia Principles of Ownership Reform Act.

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

Rait Maruste
Chief Justice of the Supreme Court

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