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

of 30 September 1994

Review of the constitutionality of § 25(3) of the Law of Property Act Implementation Act to the extent that it repeals of § 30(2) of the Farm Act of the Estonian SSR.

The Constitutional Review Chamber sitting in a panel presided over by Chief Justice Rait Maruste, and composed of justices Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld, at its session of 28 September 1994, with the Deputy Chancellor of Justice-Adviser Aare Reenumägi appearing, and in the presence of the Secretary to the Chamber Kerdi Raud, reviewed the judgment of Tallinn Administrative Court of 27 May 1994, whereby § 25(3) of the Law of Property Act Implementation Act, with respect to repeal of § 30(2) of the Farm Act of the Estonian SSR, was declared unconstitutional and was not applied.

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

On 27 October 1993 the Riigikogu passed the Law of Property Act Implementation Act, which entered into force on 1 December 1993. By § 25(3) of the Law of Property Act Implementation Act, the Estonian SSR Farm Act - passed on 6 December 1989 - was repealed, except § 4(5), 14(3) and (5) thereof. § 30(2) of the Farm Act established that farms set up on the basis of this Act would be exempted from taxes for a period of 5 years as of the first day of the month following the setting up of the farm.

On 1 December 1993 the Harju County Tax Board Office notified Elmur Rikmann that pursuant to the Land Tax Act he was obliged to pay land tax in the amount of 921 kroons on the registered immovable of Vanakubja Farm with the area of 53.2 hectares situated in Kose rural municipality. Elmur Rikmann paid the land tax and appealed to court seeking return of the tax amount paid. He argued that the imposition of a tax on farm lands was illegal since § 30(2) of the Farm Act exempted the farms created under the Act from taxes for the first five years. Elmar Rikmann pointed out that he had taken a loan in the belief that the farm would be exempted from tax until 1 January 1996. The unexpected abolition of the tax exemption, which was promised for a specific period of time, causes him difficulties with repaying the loan.

On 27 May 1994 the Tallinn Administrative Court decided to satisfy the request of Elmar Rikmann and not

to apply § 25(3) of the Law of Property Act Implementation Act to the extent that it repealed § 30(2) of the Farm Act, as the provision was in conflict with § 10 of the Constitution. The Tallinn Administrative Court held that § 10 of the Constitution establishes the principles of a state based on democracy, social justice and the rule of law as a basis for the legal system of Estonia. Observance of the principles of the rule of law requires the guaranteeing and safeguarding the people's confidence in the law and in the lawfulness of state authorities. The court points out in its judgment that repealing of § 30(2) of the Farm Act is in conflict with the universally recognised principle pursuant to which laws must not have retroactive force. The court argued that by repealing § 30(2) of the Farm Act the farmer was placed under a duty from which he thought he would be exempted, pursuant to law, until 1 January 1996.

On 27 May 1993, on the basis of § 5(2) of the Constitutional Review Court Procedure Act and § 20(3) of the Code of Administrative Court Procedure, judge Hilja Käba of the Tallinn Administrative Court sent the judgment of 27 May 1994 to the Supreme Court. The Supreme Court received the judgment on 31 May 1994.

On 15 June 1994 the Constitutional Review Chamber requested that the Supreme Court *en banc* extend the time limit for the review of the case. On 15 June 1994 the Supreme Court *en banc*, acting on the basis of § 10(3) of the Constitutional Review Court Procedure Act, extended the time limit for the review of the case until 30 September 1994.

On 15 September 1994 the Minister of Justice Urmas Arumäe submitted his written opinion to the Constitutional Review Chamber. He is of the opinion that abolishment of the tax exemption, which was established by § 30(2) of the Farm Act, is in conflict with the principle of legitimate expectation.

At the court hearing the Deputy Chancellor of Justice-Adviser Aare Reenumägi expressed the opinion that § 25(3) of the Law of Property Act Implementation Act was unconstitutional to the extent that it repealed § 30(2) of the Farm Act.

Having reviewed the documents submitted and having heard the Deputy Chancellor of Justice-Adviser, the Constitutional Review Chamber finds the following:

In democratic states the laws and general principles of law developed in the course of history are observed in law-making as well as in implementation of law, including in the administration of justice. When creating the general principles of Estonian law the general principles of law developed by the institutions of the Council of Europe and the European Union should be taken into consideration alongside the Constitution. These principles have their origin in the general principles of law of the highly developed legal cultures of the member states.

§ 10 of the Constitution establishes the following: "Rights, freedoms and duties set out in this Chapter 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." The validity of the principles of a state based on democracy, social justice and the rule of law means that in Estonia the general principles of law recognised within the European legal space are in force. Pursuant to the Preamble of the Constitution, the Estonian state is founded on liberty, justice and law. In a state founded on liberty, justice and law the general principles of law are in force. Consequently, an Act which is in conflict with these principles is also in conflict with the Constitution.

The Constitution, and Acts and other legislation adopted in accordance therewith, are intended to create order and stability in society. Thereby a solid and stable basis for legal exercise of fundamental rights and freedoms is created, and legal certainty as a social value is formed.

One of the general principles of law is that as a rule, laws must not have retroactive effect. When solving the dispute the Tallinn Administrative Court erroneously held that § 25(3) of the Law of Property Act Implementation Act had retroactive effect with respect to repeal of § 30(2) of the Farm Act. The Law of Property Act Implementation Act contains no provision to the effect that § 25(3) of the Act, which abolished

the tax exemption established by the Farm Act, has retroactive effect. In demanding the payment of land tax from Elmur Rikmann for the year 1993, the Harju County Tax Board Office had retroactively applied a provision of law which had no retroactive effect.

According to the spirit of the Constitution the principle of legitimate expectation is a general principle of law in Estonia. According to that principle everyone has a right to conduct his or her activities in the reasonable expectation that applicable Acts will remain in force. Everyone must be able to enjoy the rights and freedoms granted to him or her by law at least within the period established by the law. Modifications to the law must not be perfidious towards the subjects of the law.

Since the state promised a tax exemption for the first five years to farms set up on the basis of the Farm Act, the farmers had the right to expect and conduct their activities in the belief that the tax exemption would be effective for five years. The abolition of the tax exemption within that period was in conflict with the principle of legitimate expectation and therefore with § 10 of the Constitution. The Tallinn Administrative Court was correct in finding that § 25(3) of the Law of Property Act Implementation Act was unconstitutional to the extent that it repealed § 30(2) of the Farm Act.

Pursuant to § 152(2) of the Constitution and § 19 (1)2) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

To declare § 25(3) of the Law of Property Act Implementation Act invalid to the extent that it repeals § 30(2) of the Farm Act of the Estonian SSR.

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

Rait Maruste Chairman of the Constitutional Review Chamber

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