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JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 18 February 1994

Review of the petition of the President of the Republic, submitted under § 107 of the Constitution, for the declaration of unconstitutionality of the Decorations Act.

The Constitutional Review Chamber sitting in a panel
presided over by justice Tõnu Anton
and composed of justices Lea Kalm and Jüri Pöld,
at its session of 16 February 1994,
with the representative of the President of the Republic Vahur Glaase and the Chancellor of Justice Eerik-Juhan Truuväli appearing,
and in the presence of the Secretary to the Chamber Ene Kull,
reviewed the petition of the President of the Republic of 19 January 1994.

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

On 15 December 1993 the Riigikogu passed the Decorations Act, which the President of the Republic refused to promulgate by resolution no. 250 of 29 December 1993. On 12 January 1994 the Riigikogu again passed the Decorations Act, unamended. On 19 January 1994 the President of the Republic submitted a petition to the Supreme Court for the declaration of unconstitutionality of the Decorations Act, passed by the Riigikogu on 12 January 1994.

The President of the Republic is of the opinion that § 9(2) of the Decorations Act is in conflict with § 78(15) of the Constitution. § 9(2) of the Decorations Act allows the President of the Republic to bestow decorations only on the basis of propositions made by the Committee on Decorations, which excludes the constitutional right of the President of the Republic to bestow state awards on his own initiative.

Having heard the explanations of the representative of the President of the Republic and having heard the Chancellor of Justice, the Constitutional Review Chamber finds the following:

Under § 2(2) of the Decorations Act decorations are state awards, consequently these must be established and bestowed in accordance with the Constitution.

According to § 65(12) of the Constitution the Riigikogu is competent to establish state awards.

Consequently, establishment of the procedure for recommendation for and bestowal and wearing of decorations by the Riigikogu is in conformity with the Constitution. This procedure must be in conformity with § 78(15) of the Constitution, which provides that the President of the Republic shall confer state awards. Under § 9(3) of the Decorations Act, however, recommendations for the bestowal of decorations are not submitted to the President of the Republic, but instead to the Committee on Decorations.

According to § 9(2) of the Decorations Act the President of the Republic bestows decorations on the basis of propositions made by the Committee on Decorations. Consequently, the Committee on Decorations can make a preliminary selection, leaving to the President of the Republic the right to decide on the bestowal of decorations concerning only those individuals in regard of whom the Committee has submitted a proposition. Thus, the Committee on Decorations created by the Government of the Republic would decide on the bestowal of awards through the preliminary selection, by not making relevant propositions to the President of the Republic. The Government of the Republic and the Committee it has created do not have the right to decide questions which have been placed within the competence of the President of the Republic by the Constitution.

According to the Decorations Act the President of the Republic may also make proposals for bestowal of decorations to the Committee on Decorations. But the Committee on Decorations, on the basis of § 9 of the Act, has the possibility to reject such a proposal and not to submit a proposition, necessary for the bestowal of decorations, to the President of the Republic. Thus, the President of the Republic can not decide at his or her discretion to bestow decorations on individuals who, pursuant to a relevant Act, could receive state awards.

It follows from the above that § 9(2) of the Decorations Act is in conflict with § 78(15) of the Constitution.

§ 15(1) of the Decorations Act establishes that an Estonian citizen on whom a foreign state badge of honour or decoration is bestowed upon may receive and wear these on the basis of a resolution of the President of the Republic. Thus, the Act has imposed on the President of the Republic a duty extending the competence of the President of the Republic, which is exhaustively determined by the Constitution. This fact, however, has not been referred to in the petition.

Pursuant to § 152(2) of the Constitution and § 19 (1) 4 of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

To declare the Decorations Act passed by the Riigikogu on 12 January 1994, unconstitutional.

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

Tõnu Anton
Member of the Constitutional Review Chamber

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