

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 30 September 1998**

Review of the petition of the Hiiu County Court to declare § 1(8)3) and § 15(7) of the Legislation Relating to Ownership Reform Amendment Act invalid due to their conflict with § 10 of the Constitution.

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Tõnu Anton and composed of members of the Chamber, justices Lea Kalm, Ants Kull and Jüri Pöld, at its open session of 16 September 1998, with the representative of the Riigikogu Mihkel Pärnoja, representative of the Chancellor of Justice Aare Reenumägi and 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 Hiiu County Court of 1 June 1998.

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

On 20 February 1998 the Hiiu county governor, by way of supervisory control, submitted a protest to the administrative judge of the Hiiu County Court, because the Pühalepa rural municipality government had not complied with the request of county governor to bring the rural municipality government orders no. 156 and no. 158 of 21 April 1997 into conformity with law. With the referred orders the rural municipality government approved the value of unlawfully expropriated property which is destroyed, and the determination of compensation to the entitled subjects of the ownership reform. The orders of the rural municipality government had been issued after 2 March 1997, when the amendment to § 13(4) of the Principles of Ownership Reform Act took effect, pursuant to which the unlawfully expropriated property which is destroyed shall not be compensated for.

On 14 May 1998 the administrative judge of the Hiiu County Court dismissed the protest of the county governor. The court did not apply § 1(8)3 and § 15(7) of the Legislation Relating to Ownership Reform Amendment Act, and declared the provisions unconstitutional, thus initiating a constitutional review proceeding in the Supreme Court.

Pursuant to the reasoning of the court judgment, the Constitution and the laws which are enacted in conformity therewith are intended to create order and stability in a society. Thereby a solid and stable foundation for the lawful exercise of fundamental rights and freedoms is created, and legal certainty as a social value is formed. The court referred to the view expressed by the Constitutional Review Chamber of the Supreme Court in its judgment no. III-4/A-5/94 of 30 September 1994, that the principles of a state based on democracy, social justice and the rule of law, specified in § 10 of the Constitution, mean that the general legal principles valid in European legal space are also valid in Estonia. Proceeding from the Constitution one of the general principles of law is the principle of lawful expectation, pursuant to which everyone is entitled to act in reasonable expectation that the applicable law shall remain in force. The court also justified its opinion with the recognised principle that a procedure or a court proceeding has to be concluded or resolved on the basis of the laws or other legislation that were in force when the procedure or proceedings were started. The persons' right of claim was recognised through administrative acts, enacted pursuant to established procedure, as early as late in 1996, that is before the Legislation Relating to Ownership Reform Amendment Act was adopted and entered into force on 2 March 1997. The administrative judge found that it was not the fault of the people that expert statements determining the value of property were prepared after the law was amended. The entitled subjects had no possibility to accelerate the process of determining, by the expert commission, of the value of unlawfully expropriated property which is destroyed, at the time of expropriation. The state has been affording entitled subjects compensation for unlawfully expropriated property which is destroyed since the Principles of Ownership Reform Act was adopted in 1991, and the sudden termination of payment of compensation is contrary to the principle of legal certainty, and constitutes the infringement of people's lawful expectations. To avoid causing new injustices is one of the basic purposes of the ownership reform.

On the basis of the aforesaid the Hiiu County Court is applying for the declaration of invalidity of § 1(8)3 and § 15(7) of the Legislation Relating to the Ownership Reform Amendment Act because these are in conflict with § 10 of the Constitution.

At the session of the Constitutional Review Chamber of the Supreme Court the representatives of the Riigikogu and of the Minister of Justice were of the opinion that the petition of the Hiiu County Court should be dismissed, because the contested provisions were not in conflict with the Constitution. According to the

representative of the Minister of Justice the Riigikogu has come to the conclusion that the assumption in 1991 by the Supreme Council of the Republic of Estonia of the obligation for the state to compensate for the destroyed property was not justified. Compensating for the destroyed property caused new injustice towards other members of society who are to meet the expenses of compensation.

The representative of the Chancellor of Justice argued that § 1(8)3 and § 15(7) of the Legislation Relating to the Ownership Reform Amendment Act were in conflict with the principles of legal certainty and equal treatment, and thus also with the Constitution.

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

I.

The wording of § 13(1) of the Principles of Ownership Reform Act in the wording in force as of 2 June 1993 established: "If unlawfully expropriated property as an object of ownership reform is destroyed, if it can not be returned pursuant to § 12 of this Act or if such property comprises stocks or share certificates, the state shall compensate for the property to the extent and pursuant to the procedure provided by law, proceeding from the value of the property at the time of unlawful expropriation. Natural persons, legal persons and local government bodies who own unlawfully expropriated property which is not returned in the cases provided for in § 12 of this Act or in whose ownership the property was destroyed or from whose ownership the property was removed by any other method are not required to pay compensation except for the cases provided for in § 14 of this Act."

§ 13 of the Principles of Ownership Reform Act was amended by § 1(8) of the Legislation Relating to Ownership Reform Amendment Act, which was passed on 29 January 1997 and entered into force on 2 March 1997.

The first sentence of § 13 was amended and worded as follows: "If unlawfully expropriated property as an object of ownership reform is not returned pursuant to § 12 of this Act or if such property comprises stocks or share certificates, the state shall compensate for the property to the extent and pursuant to the procedure provided by law." The following sentence in the following wording was added to subsection 4: "The state shall not compensate for unlawfully expropriated property which is destroyed unless otherwise provided by law."

Pursuant to § 15(7) of the Legislation Relating to Ownership Reform Amendment Act also the destroyed property is compensated for, if a city or rural municipality government has, by an order, approved the determination of the value of unlawfully expropriated property which is destroyed, before this Act entered into force.

It appears from the aforesaid that in the course of ownership reform the compensation for unlawfully expropriated property was materially changed.

II.

According to § 102 of the Constitution, laws shall be passed in accordance with the Constitution. Legislation regulating ownership reform and the amendment acts to the laws are subjected to the referred constitutional provision and must be in conformity with the Constitution. This is reassured by the Constitution of the Republic of Estonia Implementation Act, which makes no exception concerning ownership reform laws.

§ 10 of the Constitution provides: "The 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 Constitutional Review Chamber of the Supreme Court reiterates its view, expressed in its judgment of 30 September 1994, that the validity of the principles of a state based on democracy, social justice and rule of law in Estonia means the validity of general principles of law recognised in the legal space of Europe. Legal certainty and lawful expectation are among such principles.

The entitled subjects whose unlawfully expropriated property was assessed and the assessment approved by a city or rural municipality government order before 2 March 1997, were compensated by the state for the destroyed property. The state did not compensate for the destroyed property of other entitled subjects. The compensation was also refused to persons who, by a judgment of a competent body, had been declared entitled subjects of ownership reform, and also persons in regard to whose petitions a city or rural municipality government had issued orders to initiate proceedings for compensating for the property. Thus, the Riigikogu unlawfully restricted the compensation for unlawfully expropriated property which is destroyed, in comparison with the earlier law. In conflict with the principles of legal certainty and lawful expectation the

compensation, promised by law, was denied to persons who had already started to exercise their rights and whose subjective right had been recognised by administrative legislation of specific application, issued according to law.

The Constitutional Review Chamber also considers it necessary to point out that the termination of compensating for destroyed property also violates the principle of equal treatment, established by § 12 of the Constitution. With the amendment to the law the entitled subjects were categorised into persons whose property was assessed and to whom compensation was determined before the amendment was enacted, and into persons whose property was not assessed and to whom compensation was not determined for reasons beyond their control, before the amendments were enacted. Such basis for categorisation can not be regarded as reasonable.

According to § 4 of the Unlawfully Expropriated Property Valuation and Compensation Act the value of structures and machinery in production buildings at the time of unlawful expropriation shall be determined by an expert commission. Expertise shall be prescribed by a rural municipality or city committee, who shall also appoint the expert committee, formed by a county governor or city government. § 8 of the same Act establishes that the determination of the value of property shall be arranged and the determined value shall be approved by the rural municipality or city government who decides on the return of and compensation for the property. Thus, the procedure for determining the value of destroyed property and the duration of the proceedings did not depend on the entitled subject, instead it depended on the local governments and state officials.

From the materials of the administrative matter examined by the Hiiu County Court it appears that pursuant to the decisions of the Hiiu county committee for return of and compensation for unlawfully expropriated property of 26 May 1994 and 20 May 1995, the Pühalepa rural municipality government, by its order no. 236 of 30 September 1996 and order no. 312 of 18 November 1996, initiated the proceedings for compensating for unlawfully expropriated property which is destroyed in relation to Ellen Jõgi, Maimo Kalmet and Vilma Rihma regarding the property which had belonged to Friedrich Kärner, and in relation to Valdo Leiva, Sulev Leiva, Grete Raudam, Esta-Galina Esna and Anu Toode regarding the property which had belonged to Marin Leiva. The Pühalepa rural municipality government had decided, by its order no. 237 of 30 September 1996, and order no. 313 of 18 November 1996, to compensate the referred persons for unlawfully expropriated property which is destroyed. Thereby, the rural municipality government requested that the expert committee, set up by the Hiiu county government, determine the value of the property at the time of unlawful expropriation. The committee prepared respective expert's reports on 1 November 1996 and 23 March 1997, respectively. By orders no. 156 and 158 of the Pühalepa rural municipality government the value of the property was approved and compensation for the property was determined. The aforesaid proves vividly that the petitions of persons with the right of claim for unlawfully expropriated property were proceeded at different speed, and that this did not depend on the petitioners. After the Amendment Act entered into force the entitled subjects were not treated equally, and this constitutes injustice towards some of the entitled subjects.

Thus, § 1(8)3 and § 15(7) of the Legislation Relating to the Ownership Reform Amendment Act are in conflict with §§ 10 and 12 of the Constitution. The principles of legal certainty, lawful expectation and equal treatment have been violated.

III.

Pursuant to the principle of proportionality, valid in a state based on rule of law, the measures taken must be proportionate to the objectives to be achieved. The representative of the Minister of Justice argued at the court session that by partial termination of compensating for unlawfully expropriated property which is destroyed, the legislator wanted to avoid causing injustice towards other members of society who have to meet the expenses of compensation.

The Constitutional Review Chamber is of the opinion that the partial termination of compensating for destroyed property does not serve the purpose referred to by the representative of the Minister of Justice. The entitled subjects who have received or receive compensation were aware of the provision of law, pursuant to which the unlawfully expropriated property which is destroyed was compensated for, and they had no grounds to expect that the circle of persons receiving compensation would be restricted in their favour. The subjects whose property is destroyed were entitled, pursuant to the earlier wording of the Principles of Ownership Reform Act, to expect that in the course of the reform they will not be subjected to rules less favourable to them than to other subjects, namely to rules that entail denial of compensation to them and, at the cost of this, relative increase of the value of the compensation receivable by the other recipients of compensation. Proceeding from this the Supreme Court is of the opinion that the fact that in the course of compensating for unlawfully expropriated property the position of some entitled subjects was somewhat improved at the cost of considerable deterioration of the position of other entitled subjects does conform to the principle of proportionality.

If a social-economic analysis indicates that compensating for unlawfully expropriated property in the present amount would be essentially detrimental to Estonia's economy, then compensation should be restricted at least according to the principle of equal treatment. Henceforth, pursuant to this principle all entitled subjects should be treated equally, irrespective of the nature and state preservation of unlawfully expropriated property.

On the basis of the aforesaid and pursuant to § 152 (2) of the Constitution and § 19(1)2) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber of the Supreme Court has decided:**

To satisfy the petition of the Hiiu County Court of 1 June 1998, and to declare § 1(8)3 and § 15(7) of the Legislation Relating to Ownership Reform Amendment Act invalid.

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

Tõnu Anton
Chairman of the Constitutional Review Chamber