

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 21 December 1994**

Review of the constitutionality of clause 2 of the Government of the Republic Regulation no. 215 of 24 July 1992, and of the Act Invalidating Transactions Involving Land, Buildings and Structures on the Territory of the Republic of Estonia, Which Had Been and Are in the Possession or Use of the Former Soviet Union Armed Forces.

The Constitutional Review Chamber sitting in panel presided over by the Chairman of the Chamber Rait Maruste and composed of members of the Chamber, associate justices Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld, at its session of 7 December 1994, with the representative of the Ministry of Defence Andres Hallmäe and the representative of the Deputy Chancellor of Justice-Adviser Aare Reenumäe appearing and in the presence of the secretary to the Chamber Kerdi Raud, reviewed the judgment of the Tallinn Circuit Court of 19 October 1994, by which the court declared unconstitutional and therefore did not apply clause 2 of the Government of the Republic Regulation no. 215 of 24 July 1992, entitled "On re-registration of transactions between the structural units of the armed forces of the former Soviet Union and enterprises, agencies, organisations and individuals on the territory of the Republic of Estonia", and the "Act Invalidating Transactions Involving Land, Buildings and Structures on the Territory of the Republic of Estonia, Which Had Been and Are in the Possession or Use of the Former Soviet Union Armed Forces", passed by the Riigikogu on 18 May 1993.

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

The civil chamber of the Tallinn Circuit Court, having examined the appeal of public limited companies Fonon and Baltic Group International against a judgment of the Tallinn City Court, decided on 19 October 1994 to satisfy the appeal and to declare unconstitutional and not to apply clause 2 of the Government of the Republic Regulation no. 215 of 24 July 1992, and the "Act Invalidating Transactions Involving Land, Buildings and Structures on the Territory of the Republic of Estonia, Which Had Been and Are in the Possession or Use of the Former Soviet Union Armed Forces", passed on 18 May 1993.

The complainants argued that they had lawfully, under a contract of purchase and sale, acquired the property, which was non-military in nature and did not belong to the Republic of Estonia, that they were the owners of the property in good faith, and that in the capacity of owners they are entitled to equal protection of their rights. The complainants also argued that issues of ownership could not be regulated by governmental regulations.

The civil chamber of the Circuit Court found that clause 2 of Regulation no. 215 of the Government of the Republic was in conflict with § 32(2) of the Constitution which establishes everyone's right to freely possess, use and dispose of his or her property. Restrictions shall be provided by law. Ownership restrictions do not fall within the competence of the Government of the Republic. At the time of the referred transactions there was no law restricting the right to possess, use or dispose of the property under dispute.

The civil chamber of the Circuit Court also found that the "Act Invalidating Transactions Involving Land, Buildings and Structures on the Territory of the Republic of Estonia, Which Had Been and Are in the Possession or Use of the Former Soviet Union Armed Forces", passed on 18 May 1993, was in conflict with the Constitution. § 1 of the Act declares invalid all transactions concluded after 30 March 1990 without the consent of the Government of the Republic involving land, buildings and structures on the territory of Estonia, which had formerly been in the possession or use of the structural entities of the armed forces of the former Soviet Union. According to § 146 of the Constitution justice shall be administered solely by the courts. The Riigikogu, by declaring invalid certain civil transactions, has administered justice. Such activity of the Riigikogu is in conflict with § 146 of the Constitution and with the constitutional principle of separate and balanced powers. Furthermore, the Circuit Court held that the referred Act was also in conflict § 3 of the Constitution, which prescribes that only published laws have obligatory force, whereas the Riigikogu has imposed a retroactive ban by the referred Act.

On 19 October 1994, pursuant to § 5(2) of the Constitutional Review Court Procedure Act, the Tallinn Circuit Court sent its judgment to the Supreme Court. The Supreme Court received the judgment on 31 October 1994.

The Ministry of Defence has filed an appeal in cassation with the Supreme Court concerning this civil matter.

At the court hearing the representative of the Ministry of Defence argued that the contested acts were not in conflict with the Constitution, whereas the Chancellor of Justice supported the request set out in the Circuit Court judgment.

Having examined the documents submitted and having given a fair hearing to the representatives of the Ministry of Defence and the Chancellor of Justice, the Constitutional Review Chamber found, that:

The Estonian state is founded on the inextinguishable right to self-determination of the Estonian people, and was proclaimed on 24 February 1918.

The Republic of Estonia was occupied and annexed by the Soviet Union in 1940 on the basis of Molotov-Ribbentrop Pact with the help of its armed forces, and was unlawfully incorporated into the Soviet Union. This was illegal under international law and contradicted the interests and goals of the Estonian people established in the Constitution.

Proceeding from the supremacy of international law states have the obligation to observe the norms of international law, including the unwritten norms of international law. Article 55 of the Hague Convention IV prescribes that the occupying state shall not acquire real estate of the occupied state. It must safeguard the capital of properties and may only be an administrator and usufructuary thereof.

Restoration of the Estonian state has been a process, based on political and legal judgments, the extent, legal content and form of which have been determined by the possibilities at the disposal of state-building forces at the moment.

On 30 March 1990 the Supreme Council of the Estonian SSR, in the capacity of the actual people's representative body of that time, expressed its will to restore the independence of the Republic of Estonia, and declared the state authority of the Union of the Soviet Socialist Republics in Estonia to be illegal from the moment of imposition thereof, and pronounced the restoration of the Republic of Estonia (*restitutio ad integrum*). The Supreme Council of the Estonian SSR resolution of 16 May 1990 "On the Action Programme of the Supreme Council of the Republic of Estonia during the Transformation Period until the Restoration of the Republic of Estonia and on the Temporary Organisation of Government" established that the legal system to be created in the Republic of Estonia shall be based on the will of the people and generally recognised norms of international law.

By the Presidium of the Supreme Council of the Republic of Estonia resolution of 17 July 1990 "On Prime Measures for the Organisation of Privatisation" the changing of the form of ownership of state-owned property was suspended. In its resolution of 19 December 1990 the Supreme Council declared change of ownership relations by the Soviet Union to have been forcible, and restored the principle of the legal succession of ownership. Clause 1 of the Supreme Council resolution of 29 August 1991 repealed all legal acts passed after 16 June 1940 by state and governmental authorities of the Republic of Estonia or the Estonian SSR, by which enterprises, agencies and organisations were transferred under the subordination, administration or control of the Soviet Union state authorities. With the same resolution the property of enterprises, agencies and organisations, which had been under the subordination or administration of the Soviet Union state authorities, located on the territory of the Republic of Estonia, was declared property of the Republic of Estonia. With its resolution of 23 January 1992 "On declaring the buildings and other property, which is under the administration of the armed forces of former Soviet Union and which is located on the territory of the Republic of Estonia, to be the property of the Republic of Estonia", the Supreme Council pronounced the buildings and other structures, which had been under the administration of the armed forces of the former Soviet Union and which were located on the territory of the Republic of Estonia, to be property of the Republic of Estonia and banned all transactions involving such property except upon the approval of the government.

The army property is state property. The immovable property that had been at the disposal and in the use of the armed forces of the former Soviet Union - land, buildings and structures - had been and still is the property of the Estonian state. Actual possession, use and disposal of the property became possible gradually, beginning with the decision of restoration of the Republic on 30 March 1990. It follows from international law and the continuity of the Republic of Estonia that neither the armed forces of the Soviet Union nor its structural entities were lawful subjects of transactions involving land, buildings or objects located on the territory of the Republic of Estonia.

The allegation that the property possessed and used by the armed forces of the Soviet Union did not belong to the Republic of Estonia is erroneous also in the sense that upon disintegration of the Soviet

Union Estonia was entitled to a certain part of the property of the Soviet Union at the time.

Judicial opinion on how transactions involving army property should be handled from the point of view of civil law was given by the Chamber of Civil Cases of the Supreme Court of the Republic of Estonia on 29 January 1993 in its ruling, and by the Presidium of the Supreme Court in its ruling of 5 May 1993.

The principle of supremacy of the will of the people and state sovereignty entitles lawfully established state authorities to determine the procedure for the possession, use and disposal of property; this is what the Riigikogu and the Government of the Republic have done in this case. The legislator is entitled, in principle, and taking into account the will of the people expressed in the Constitution, bearing in mind the general public interests of the state, and taking account of the actual situation as well as the principle of legality, to issue legislation with retroactive effect, not pertaining to criminal law, and by which former legislation may be amended or repealed. In the case under discussion there was no legal need or basis to invalidate transactions retroactively by an Act, because relevant legal decisions had already been taken. The provisions of § 1 of the Act of 18 May 1993 concerning the annulment of transactions confused the legal regulation, and are in conflict with the principles of a rule-of law state, pursuant to which the legislator is competent to establish the grounds for assessing the validity of transactions, but only the courts are entitled to invalidate the transactions. Therefore, § 1 of the Act of 18 May 1993, to the extent that it annuls the transactions, is in conflict with the spirit of the Constitution implying that the Republic of Estonia is based on the rule of law, and with the provision included in § 146 of the Constitution establishing that justice shall be administered solely by the courts. Other sections of the Act of 18 May 1993 have no independent regulatory force.

The Circuit Court has an erroneous opinion that the restrictions imposed by the Government of the Republic Regulation of 24 July 1992 violate § 32(2) of the Constitution, which establishes that restrictions on the possession, use and disposition of property shall be provided by law. The referred Regulation restricted the use of state property. The right and obligation to possess, use and dispose of state property is vested with the Government of the Republic. The principles pertaining to free possession, use and disposition of property established in § 32 of the Constitution apply only to lawfully acquired property.

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

- 1. To partly satisfy the request for constitutional review included in the judgment of the Tallinn Circuit Court of 19 October 1994.**
- 2. To declare § 1 of the Act Invalidating Transactions Involving Land, Buildings and Structures on the Territory of the Republic of Estonia, Which Had Been and Are in the Possession or Use of the Former Soviet Union Armed Forces, passed on 18 May 1993, invalid.**

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

Rait Maruste
Chief Justice of the Supreme Court