

## THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

### R U L I N G

On the compliance of item 2. 2 of the Government of the Republic of Lithuania Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", adopted 17 May 1993, with Article 23 of the Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property".

15 July 1994, Vilnius

The Constitutional Court of the Republic of Lithuania, composed from the Justices of the Constitutional Court Algirdas Gailiūnas, Zigmās Levickis, Vladas Pavilonis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilys,

the secretary of the hearing - Rolanda Stimbirytė,

the party concerned - Jadvyga Aleksaitė, representative of the Government of the Republic of Lithuania, the Head of the Department of Private Ownership under the Ministry of Justice of the Republic of Lithuania,

pursuant to the first part of Article 102 of the Constitution of the Republic of Lithuania and Part 1, Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing of 12 July 1994 conducted the investigation of Case No 1/94 subsequent to the petition submitted to the Court by Tauragė District Court requesting to investigate if item 2. 2 of the Government of the Republic of Lithuania Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", adopted 17 May 1993, is in conformity with Article 23 of the Constitution of the Republic of Lithuania and the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property".

The Constitutional Court  
has established:

The petitioner - Tauragė District Court - requests the Constitutional Court to investigate if item 2. 2 of the Government Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", adopted 17 May 1993, is consistent with Article 23 of the Constitution and the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property".

The Court in its ruling and the judge in her pleading specified, without calling in question the requirements set forth in the Law "On the Procedure and Conditions of the

Restoration of the Rights of Ownership to the Existing Real Property" that under said Law the Government is obligated to establish the procedure and terms for the restoration of the existing real property, that "item 2. 2 of the Government Resolution of 17 May 1993 has changed in essence the principles governing the restoration of ownership rights and the appropriate provision of the Constitution of the Republic of Lithuania".

In the petitioner's opinion, the Government by item 2. 2 of the resolution of 17 May 1993 recognized that the ownership rights of citizens to residential houses had already been restored on the decisions adopted by district (city) boards. In other words, the citizens' rights are already restituted under said Law, and they have already become the owners of residential houses and other structures belonging to them by the right of ownership. Said citizens may not be considered as applicants or claimants to property, because their ownership right to houses has been restored, actual houses have been returned, legal registration has been carried out and they are already the owners of these houses. The Government, while obligating district boards by item 2. 2 of said resolution to reconsider the decisions concerning the restoration of ownership rights, violated the subjective ownership rights of citizens as it authorized the district (city) boards to nullify or change the ownership rights that had been restored to citizens - former owners.

The petitioner maintains that "only the Court may nullify, change and deprive of legal relations with regard to ownership rights, and only on condition that causes thereof are specified in the law. In the case under consideration, the provision of the Government Resolution and permission given to district (city) boards to reconsider the questions concerning the restoration of ownership rights (in other words, deprivation or changing of the right of ownership, although this right has been restored in violation of the laws and Government resolutions valid at that time) is not permissible and contradicts Article 23 of the Constitution of the Republic of Lithuania".

The petitioner explains that the Government Resolution in dispute regulates in great detail the ways of coping with some situations. "Speaking about item 2. 2 of said Resolution, the proposition "to reconsider" is not defined in any way and may be understood only in a wider sense, i. e. upon establishing cases of violation of ownership rights, district (city) boards reconsider their earlier adopted decisions (maybe annul or amend them) and actually deprive citizens of their property which had already been returned to them on the previous decision concerning the restoration of ownership rights".

During preliminary investigation of the case and in the court hearing the representative of the party concerned explained that Tauragė District Court, while settling the disputes pertaining to the restoration of ownership rights, had to observe not item 2. 2 of said Resolution of the Government but the provisions of the Law "On Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" that regulated the procedure and conditions of the restoration of ownership rights of citizens to the existing real property.

According to the second part of Article 8 of this Law, the procedure and time limits for the restoration of residential houses (or portions thereof) shall be established by the

Government of the Republic of Lithuania. Thus, the Government, by way of implementing this Law as well as item 12 of the Supreme Council of the Republic of Lithuania Resolution "On the process of enforcement and application of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", adopted 16 July 1991, drafted and by the 15 November 1991 Resolution confirmed the procedure of the implementation of the Law of the Republic of Lithuania "On Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" (the procedure established by the 15 November 1991 Resolution was subsequently amended by the Government Resolution of 17 May 1993).

In the opinion of the representative of the party concerned, "the Government of the Republic of Lithuania by way of implementing the above mentioned procedure and having enough data and facts to prove that while considering the citizens' requests and adopting decisions concerning the restoration of ownership rights to residential houses (or portions thereof) city (district) boards and other institutions authorized by the state, do not meet the requirements set forth in the Law on the Restoration of Ownership Rights and do not observe the provisions of the procedure for the implementation of said Law, which is prescribed in Chapter 8 of the Law titled "Conditions and Procedures for the Restoration of Ownership Rights to Residential Houses", under item 2. 2 of the 17 May 1993 Resolution obligated these institutions to reconsider the decisions pertaining to the ownership rights to the existing real property by amending and defining them more precisely, as well as eliminating violations provided that they were made in the restoration of ownership rights".

Prior to the adoption of the Government Resolution of 17 May 1993, the decisions regarding the restoration of ownership rights were most frequently passed without specifying the manner of the restoration of ownership rights or compensation for the property not to be returned, without acquainting the tenants residing in houses subject to being returned with all the laws guaranteeing their rights and with their option to move into other residential premises allotted to them.

Thus, the Government by item 2. 2 of the Resolution of 17 May 1993 did not establish any additional conditions or restrictions, aggravating the returning of residential houses (or portions thereof) to their former owners, as it was only striving to act in conformity with the provision of Article 29 of the Constitution that all people shall be equal before the law, and to protect the rights and lawful interests not only of former owners but also of the tenants.

On the basis of the above mentioned arguments, the representative of the party concerned requests to recognize that item 2. 2 of the Government Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", adopted 17 May 1993, is consistent with the Constitution and the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property".

The Constitutional Court  
holds that:

1. The first part of Article 23 of the Constitution contains the provision that property shall be inviolable and the second part of said Article - that the rights of ownership shall be protected by law. This constitutional provision corresponds to the regulation of the restitution of the rights of ownership by law.

On 18 June 1991 the Supreme Council enacted the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", whereas on 15 November 1991 the Government passed the Resolution "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ".

On 12 January the Seimas adopted the Law "On Amending the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ". Besides, on 19 January 1993 the Seimas passed the Resolution "On the enforcement and application of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" ", under which the Government had to amend its executive acts.

On 17 May 1993 the Government of the Republic of Lithuania passed the Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", (Official Gazette "Valstybės žinios", No 17-440, 1993), in item 2. 2 of which it was established that: "decisions concerning the restoration of ownership rights to the existing real property, adopted without specifying the manner of the restitution of ownership rights and in violation of the requirements prescribed by the law in effect at that time (the tenants of many-flat houses were not offered other residential premises, etc.), must be reconsidered until 31 December 1993 according to the laws and Governmental acts that were in force at the moment of the adoption of the decisions.

2. While examining this case, it is necessary to establish whether the disputable item 2. 2 is a legal norm or an individual act according to its contents and nature.

Normative acts are those which contain universally binding rules of common nature, was not the specific wording of an appropriate rule is of greatest importance, but the fact that, on the basis of the contents of the text, one could understand beyond doubt that the speech goes about the instruction to certain subjects to act in an appropriate way under certain circumstances (the Constitutional Court ruling of 19 January 1994, Official Gazette "Valstybės žinios", No 7-116, 1994).

Taking all this into consideration and having estimated the disputable item 2. 2 of the Government Resolution, the conclusion can be drawn that the contents of said item absolutely complies with the nature of a legal norm. This is confirmed by the definite instruction formulated in the above mentioned item, that the decisions concerning the restitution of ownership rights to the existing real property, adopted without specifying the manner of the restoration of ownership rights and in violation to other requirements prescribed by the law then valid, must be reconsidered.

Item 2. 2 of the Government Resolution according to its contents is a legal norm of general nature, because it

obligates the State institutions authorised to restore, by their decisions, ownership rights for citizens to the existing real property in kind or compensate for it in the procedure prescribed by the law.

3. Jurisprudence and legal traditions allow to draw the conclusion that in the sphere of legal regulation there is a general rule that a legal norm has no retroactive validity. This means, that normative acts are generally not applied to the facts and legal consequences which came into existence prior to the enforcement of these legal acts. In the case under consideration, legal facts had already occurred - regional local governments had already adopted legal acts regarding the restoration of ownership rights. Therefore, even the supreme institution of State government could not interfere by the norms of the executive act in the legal relations that had appeared on the basis of legal facts. All the disputes of such nature must be settled only in the procedure prescribed by the Constitution and laws, i. e. they must be resolved in Court. At the time of the adoption of said Resolution, the legal procedure for the consideration of such disputes regarding the restoration of ownership rights, was determined by valid laws.

Upon establishing the violations of the requirements stipulated in the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property", the Government Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991, and the Government Resolution "On partial amendment to the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 17 May 1993, i. e. upon establishing the violation of the subjective rights of citizens or legal persons, or the powers of State institutions, appropriate persons shall bring an action to the court in the procedure prescribed by laws with the purpose to have these rights defended.

4. In the second part of Article 23 of the Constitution it is established that the rights of ownership shall be protected by law. Thus, ownership rights may be regulated only by laws and not by executive acts. The procedure and conditions of the restoration of ownership rights to residential houses have been regulated by the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property". A resolution of the Government is an executive legal act. It usually serves for the implementation of the norms of law, however no legal norm may substitute the law itself and create new legal norms of general nature, which in their power would compete with the norms of law. It is an act of the application of the norms of law, irrespective of the fact whether this act is of single (ad hoc) or permanent validity.

Once an institution authorized by the State adopts the decision to return the actual property or to give compensation for it, the decision entitles the former owner to the rights of ownership - such is the legal meaning of the adopted decision (Constitutional Court of the Republic of Lithuania Ruling of 27 May 1994, Official Gazette "Valstybės Žinios", o. 42-771, No. 42-771, 1994).

Thus, decisions by district or city boards concerning the

ownership rights to the existing real property should be disputed only in the procedure established by law, and the Government while obligating these institutions to reconsider decisions adopted earlier, authorized them to change the contents of ownership rights against the owner's will.

The notion "to reconsider" present in the disputable item 2. 2 of the Resolution can be interpreted only as the change of the scope of the contents of the earlier adopted decision concerning the rights of ownership to the existing real property subject to being returned by the right of ownership, i. e. the restriction of the owner's right to manage, use and dispose of property by an executive normative act. Such understanding of this notion has been confirmed by the practice of the application of the norm of item 2. 2 of said Resolution.

The norm of item 2. 2 of the Government Resolution in its power competes with the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" and, therefore, contradicts the second part of Article 23 of the Constitution and the Law mentioned above.

Conforming to Article 102 of the Constitution of the Republic of Lithuania as well as Articles 53, 54, 55 and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court has passed the following ruling:

To recognize that item 2. 2 of the Government of the Republic of Lithuania Resolution "On partial amendment to the Government of the Republic of Lithuania Resolution No 470 "On the implementation of the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property" " of 15 November 1991", adopted 17 May 1993, contradicts the second part of Article 23 of the Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania "On the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property".

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.