

Today, President Toomas Hendrik Ilves signed a resolution whereby the Removal of an Unlawful Structure Act passed by the Riigikogu on 15 February 2007 was not proclaimed, declaring it to be in conflict with six paragraphs of the Constitution.

Thus, the Riigikogu designates the structure located in Tallinn at Kaarli pst. 13 as an unlawful structure and obligates the Government of the Republic to remove it within 30 days of the law coming into force.

“The given provision is in conflict with the principle of the separation and balance of powers prescribed in § 4 of the Constitution of the Republic of Estonia,” said President Ilves.

According to the principle of the separation and balance of powers, every branch of government has a specific function. According to the Constitution, the Riigikogu exercise legislative power, the Government of the Republic executive power, and the courts judicial power.

“According to § 4 of the Constitution, the Riigikogu may not decide questions which have been assigned by the Constitution to the authority of other governmental powers. In performing the legislative function, the Riigikogu has the right to establish general and abstract rules, based on which the executive and judicial power resolve individual cases,” wrote the Head of State in his decision. “The Riigikogu may pass laws regarding individual questions only in cases prescribed by the Constitution (for instance, § 115). In other cases, by resolving individual questions with laws, the Riigikogu exceeds the authority granted to it by the Constitution and violates the division of functions prescribed by the Constitution.”

Chapter 2, section 2 of the Removal of an Unlawful Structure Act also places an obligation on the Administrative Court to take part in rendering a judgment. By establishing such a regulation, the legislator wishes that the court to sanction the restriction of a constitutional right—the right of ownership—in advance.

“However, the cases described in the law do not involve infringements of fundamental rights that are so exceptional in nature, that the involvement of the court in the exercise of the executive power would be justified,” wrote President Ilves in his decision. “By involving the

courts in the exercise of executive power without justification pursuant to the Constitution, the Riigikogu has endangered the fulfillment of the requirement for the independence and impartiality of the courts as prescribed by § 146 of the Constitution.”

The regulation comprised in § 2, section 2 of the law also does not conform to the principle of legal certainty prescribed by § 10 of the Constitution. Since the given provision of the law does not clarify what the administrative court controls upon granting the permit, it clouds the possibility for the protection of the rights of individuals.

According to the decision of the Head of State, the Removal of an Unlawful Structure Act is in conflict with § 4, § 10, § 12, § 59, § 86 and § 146 of the Constitution.

“I think it is necessary that the Removal of an Unlawful Structure Act passed on 15 February 2007 be discussed and resolved again by the Riigikogu and that it be brought into conformity with the Constitution of the Republic of Estonia,” wrote President Ilves in his decision.

The full text of the decision of the Head of State is available at www.president.ee .

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