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RULING OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

No. of the case	3-4-1-16-09
Date of ruling	22 December 2009
Composition of court	Chairman Märt Rask, members Peeter Jerofejev, Hannes Kiris, Priit Pikamäe, Harri Salmann
Court Case	Review of constitutionality of the second sentence of § 8(1), § 8(4) and the first sentence of § 8(4 ¹) of the Local Government Council Election Act
Basis of proceedings	Request of the Tallinn City Council of 18 June 2009
Hearing	Written proceedings.

DECISION **To deny the request of the Tallinn City Council.**

FACTS AND COURSE OF PROCEEDINGS

1. On 3 November 2008, the Chancellor of Justice made a proposal to the Riigikogu to bring § 8(4) of the Local Government Council Election Act (formation of Tallinn electoral districts by city district) and § 9(2) of the Local Government Council Election Act (special procedure for division of mandates between Tallinn electoral districts) (RT I 2002, 36, 220; 2007, 44, 316; LGCEA) into conformity with the Constitution, as the Chancellor of Justice found that these provisions are in conflict with the principle of uniformity of elections arising from the third sentence of § 156(1) of the Constitution and the principle of proportionality of elections arising from § 10 and the third sentence of § 156(1) of the Constitution.

2. As a result of the proposal of the Legal Chancellor, the Riigikogu passed, on 10 December 2008, the Act to amend the Local Government Council Election Act and the Local Government Organisation Act which was published in the Riigi Teataja on 16 December 2008 (RT I 2008, 53, 293) and which entered into force

on 17 December 2008.

3. The Tallinn City Council decided, by its resolution no. 15 of 5 February 2009, to submit to the Supreme Court a request to declare invalid § 7(2)5), § 8(4) or § 7(2)5) and § 9(2) or § 7(2)5), § 8(4) and § 9(2) of the LGCEA due to their conflict with the Constitution.

4. By a judgment of 9 June 2009 in case no. 3 4 1 2 09, the Constitutional Review Chamber of the Supreme Court (CRCSC) dismissed the request as regards § 8(4) and § 9(2) of the LGCEA and refused to satisfy the request as regards § 7(2)5) of the LGCEA.

5. On 16 April 2009, the Riigikogu passed the Act to amend the Local Government Council Election Act (RT I 2009, 23, 144) which entered into force on 1 May 2009.

6. The Tallinn City Council decided, by its resolution no. 141 of 18 June 2009, to submit to the Supreme Court a request to declare invalid the second sentence of § 8(1), § 8(4) and the first sentence of § 8(4)¹ of the version of the Local Government Council Election Act which entered into force on 1 May 2009, due to their conflict with the Constitution. The Supreme Court received the request on 26 June 2009.

JUSTIFICATIONS OF PARTICIPANTS IN PROCEEDINGS

7. As regards the admissibility of the request, the Tallinn City Council finds that the judgment of the Supreme Court of 9 June 2009 in case no. 3 4 1 2 09 does not preclude declaring the request admissible and hearing on the merits of the matter for the following reasons.

8. The request is admissible on the basis of the judgment of the Supreme Court *en banc* of 19 April 2005 in case no. 3 4 1 1 05, according to paragraph 17 of which "restrictions on the right to run as candidate at local government elections [...] may also infringe the principle of autonomy of local governments". There is no need to change such practise.

9. The Constitutional Review Chamber of the Supreme Court took in its judgment of 9 June 2009 a position which was different from that of the Supreme Court *en banc* without transferring the matter to the Supreme Court *en banc*. Such step is contrary to the general principle of proceedings according to which the position of the Supreme Court *en banc* can be changed only by a judgment of the Supreme Court *en banc*. The fact that the Chamber took a position different from that of the Supreme Court *en banc* is proven by the fact that the applicant and the Chancellor of Justice understood paragraph 17 of the judgment in the same way and at the same time in a way different from the Constitutional Review Chamber of the Supreme Court. If participants in proceedings understand the earlier practise of the Supreme Court *en banc* the same way, then a new position of the Supreme Court *en banc* is necessary in order to refute the judgment.

10. The interpretation of the Chamber regarding the earlier position of the Supreme Court *en banc* is not convincing. First, it entails two different interpretations of the judgment of the Supreme Court *en banc* – on one side, it is noted that restrictions on the right to run as candidate may infringe the right of self-organisation because they endanger the representation of local interests as a collective benefit and, on the other side, the infringement may occur also due to the fact that restrictions on the right to run as candidate endanger the independence of the persons who run as candidates or are elected, when deciding on local issues which is the personal guarantee of a candidate.

Secondly, the applicant has indicated how the contested provisions endanger the representation of local interests. If the elections lead to a result whereby the weight of the votes cast by electors in different districts differ to a large extent, a situation arises where local interests in a local government are not represented as a whole and the interests of certain city districts dominate disproportionately.

Thirdly, the applicant finds that the provisions regulating the procedure for the formation of electoral districts and the distribution of mandates may, however, infringe the right of self-organisation, for example when the Riigikogu establishes a regulation whereby all members of the Council, except one, are elected from an electoral district comprising a single city district and one member from among the rest of the city

districts which form one electoral district.

Fourthly, the judgment of the Supreme Court *en banc* was based on the concern that political parties dominant in the Riigikogu force decisions which turn local governments into an extension of state authority. The Local Government Council Election Act has been amended for this purpose, not for the purpose of eliminating the disproportionate weight of votes at elections which is in conflict with the Constitution.

11. Further, the Tallinn City Council refers in the theses of a court session organised in case no. 3 4 1 2 09 to the positions regarding the admissibility of the request which the Chamber has not discussed in its judgment. According to these, the complaint is admissible, first, on the basis of the source of § 7 of the Constitutional Review Court Procedure Act (RT I 2002, 29, 174) in the Constitution of the Federal Republic of Germany and the practice of the German Federal Constitutional Court developed on the basis thereof.

Secondly, the request is admissible due to the fact that the election of a local government council is a local issue. If council elections are deemed to be a national issue, then it means that the state must allocate funds to perform this function. The state has not allocated funds and, according to § 58(1) of the LGCEA, the expenditure relating to the organisation of elections is covered from the rural municipality or city budget.

If it were not a local issue, a situation might arise where the Riigikogu regulates the formation of a council in such a way that local issues are decided by persons designated by the Riigikogu or directly or indirectly influenced by the Riigikogu. In the specified case, the council does not represent local people, i.e. is not representative, but the local government has no means to protect itself effectively against such situation.

Thirdly, when considering the admissibility, the European Charter of Local Self-Government (RT II 1994, 95) (Charter) must also be taken into account. According to Article 3 (1) of the Charter, a local government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. The specified right is exercised at general, uniform and direct elections by secret ballot by members of a council or representative body which is freely elected. Therefore, if no representative body has been elected at uniform elections, a local government does not exist as there is no body to exercise the right of self-government.

Fourthly, violation of the persons' right to vote does not preclude infringement of the right of self-organisation of the local government.

Fifth, if it is impossible for a local government to contest regulations regarding the organisation of elections which violate the principle of uniformity, there will be no effective legal protection of the rights of voters.

Additionally, the Tallinn City Council finds that if its request is not considered admissible, there will be no institution which could initiate review of the constitutionality of the contested provisions. But such situation would be contrary to the purpose of constitutional review proceedings.

12. The applicant notes that the earlier position of the Chamber, which sets out that a situation where local governments gain the right to establish the bases for the formation of authorities for themselves would be contrary to the principle of unitary state, is irrelevant as the city of Tallinn does not wish to gain competence to regulate council elections.

13. As regards the content of the request, the Tallinn City Council first notes that the Act to amend the Local Government Council Election Act and the Local Government Organisation Act which entered into force on 17 December 2008 did not eliminate the conflict with the Constitution described above.

14. In the opinion of the Tallinn City Council, the special procedure for the formation of electoral districts in Tallinn (the second sentence of § 8(1), § 8(4) and § 8(4¹) of the LGCEA) in conjunction with the special procedure for the distribution of mandates which applies to Tallinn as a local government with several electoral districts (§ 9(2) of the LGCEA) violates the right of self-organisation of the local government, the

principle of democracy and active and passive right to vote due to the conflict with the principle of uniformity of elections.

15. According to the applicant, violation of the right of self-organisation means that although formation of electoral districts is a local issue, the city of Tallinn cannot form electoral districts in accordance with local circumstances or, upon changes in the circumstances (number of persons with the right to vote), change the boundaries of electoral districts. There are no legitimate bases for the restriction of the right of self-organisation. The contested provisions also bring about the unequal treatment of local governments and unequal opportunities for exercise of the right of self-organisation. The contested provisions only concern the city of Tallinn, but the size or distinctiveness of Tallinn cannot be the basis of restrictions which are in conflict with the Constitution. The details of the regulation established in respect of Tallinn indicate a wish to shape the representative body of Tallinn in accordance with the will of the central authority of the state.

16. As regards violation of the principle of democracy, the Tallinn City Council finds that the objective of the provisions under dispute is to influence election results in favour of the political power, that the Riigikogu has unlawfully assumed the function of constitutional review and hinders the administration of justice. Additionally, interference in the bases of election of councils and reduction of the competence of local governments to zero distorts the composition of the representative body of a local government, and the natural role of a local government as a counterbalance to the state authority is lost.

17. § 8(4) of the LGCEA and § 9(2) of the LGCEA violate the active right to vote due to their conflict with the principle of uniformity, firstly, due to the fact that in electoral districts formed according to these provisions, an elector's vote has a different weight. Secondly, due to the fact that there are no constitutional values which would cause the need to form electoral districts and distribute mandates in the city of Tallinn, as an exception, by each city district separately. Thirdly, the existence of such constitutional values would not justify violation of the principle of uniformity of elections. Fourthly, it is absolutely necessary to observe the principle of uniformity of elections in order to ensure constitutional values.

As regards the different weight of votes, the Tallinn City Council notes that each voter should have an equal opportunity to influence election results. In the electoral districts of a local government with equal number of mandates, the number of voters with the right to vote must be as equal as possible and vice versa. A situation where, in electoral districts with the same number of mandates, the number of voters is significantly different, is contrary to the principle of uniformity. The commentary to the Constitution, the Council of Europe, the Supreme Court and the Chancellor of Justice hold the same position.

The formation of electoral districts on the basis of city districts and the procedure for the distribution of mandates provided for in § 9(2) of the LGCEA create a situation in the city of Tallinn where the number of voters in city districts differs to a significant extent, and the fact is also proven by the tables appended to the request. Amendments to the Local Government Election Act which entered into force on 16 December 2008 did not eliminate this difference.

In order to distribute mandates between the inhabitants in electoral districts as proportionately as possible, the city of Tallinn should change the boundaries of city districts. Designation of the boundaries of city districts is based on other considerations than ensuring the principle of uniformity at elections. The demand to change the boundaries of city districts solely for the purpose of elections is disproportionate and violates the guarantees of a local government.

As § 8(1) of the LGCEA in conjunction with § 8(4) of the LGCEA does not allow to form one electoral district from several city districts or several electoral districts in one city district, it is impossible for the Tallinn City Council to ensure the equal weight of votes without changing the boundaries of city districts.

§ 8(4)¹) of the LGCEA also does not allow to take into account changes arising from the geographic or demographic development of the city also in the future.

Next, the Tallinn City Council finds that there exist no constitutional values which would create the need to

form electoral districts in the city of Tallinn by each city district separately.

The principle of uniformity of elections is worded without reservation of the law, therefore it can be restricted if other constitutional values are protected by the restriction. The need to protect the identity of city districts is not a value protected by the Constitution. Even if it were so, the principle would not be applicable in a local government where city districts do not follow the boundaries of historic settlements (also including in Tallinn).

If, however, the Supreme Court should find that preservation of the identity that has developed in the city district is a constitutional value, violation of the principle of uniformity is nevertheless not proportionate for achieving that purpose. Preservation of the identity of city districts can in no manner be a value of equal importance to the legitimacy of elections taking place in the local government.

Deviation from the principle of uniformity of elections may be justified only by sparse density or protection of minorities. The contested provisions of the Local Government Election Act bring about discrimination of national minorities and are in obvious conflict with the Constitution.

The figures submitted by the Tallinn City Council indicate that at the election of the Tallinn City Council non-Estonians' votes weigh less than the votes of voters who are ethnic Estonians. The specified situation constitutes violation of the prohibition on discrimination on the basis of ethnicity provided for in § 12 of the Constitution.

Discrimination can be avoided when § 8(4) and § 9(2) of the LGCEA are declared invalid. Upon absence of the restriction established by the first provision, a local government can assess whether the formation of electoral districts on the basis of city districts ensures equal representation of voters. If § 9(2) of the LGCEA is declared invalid, the distribution of mandates can be based on the general procedure and the equal weight of the votes of voters and the representativeness of the council can be ensured.

18. § 8(4) and § 9(2) of the LGCEA violate the passive right to vote due to the conflict with the principle of uniformity, firstly, because, in electoral districts formed according to these provisions, candidates have different opportunities to be elected. Secondly, because there are no constitutional values which would create the need to form electoral districts in Tallinn by each city district separately. Thirdly, the existence of such constitutional values would not justify violation of the principle of uniformity of elections. Fourthly, the principle of uniformity of elections has to be observed in order to ensure constitutional values.

The equal possibilities of candidates to be elected inevitably depend on the weight of votes cast in favour of them or on the equal impact of each vote on the election results. Violation of the principle of uniformity arising from the unequal weight of votes also brings about violation of the passive right to vote.

The objective of protection of the identity of city districts is not a constitutional value which would justify the procedure set out in § 8(1), § 8(4) and § 8(4¹) and § 9(2) of the LGCEA and violation of the principle of uniformity.

Even if one should find that preservation of the identity of city districts is a constitutional value, the value is not sufficiently compelling to justify violation of the passive right to vote.

As the weight of the votes of voters is smaller in districts where the proportion of voters from national minorities is the biggest, national minorities are proportionately under-represented in councils. But the minorities residing on the territory of a local government cannot be effectively protected when the minority cannot send its representatives to the representative body.

19. As regards violation of the principle of proportionality, the Tallinn City Council explains that due to the different weight of votes or violation of the principle of uniformity, voting results are not proportionate to election results. The obligation to organise local government elections on the basis of the principle of proportionality arises from § 10 of the Constitution (principle of democracy, protection of minorities, representativeness of representative body) in conjunction with the third sentence of § 156(1) of the

Constitution. The distribution of compensation mandates provided for in § 561 of the LGCEA also does not eliminate violation of the principle of proportionality as, upon distribution of personal mandates and district mandates, conflict with the Constitution remains and distribution of compensation mandates all over the city does not guarantee that mandates are distributed in accordance with the Constitution.

20. The applicant additionally notes that upon amendment of the Local Government Council Election Act, the principle of involvement, provided for in Article 5 of the Charter, was violated.

Additionally, enforcement of these provisions also violates the principles of legal clarity and legal certainty. According to the applicant, these amendments should enter into force at least one year before the elections after the next elections in order to eliminate obvious and unquestionable unlawfulness. It is not permissible to amend legislation concerning elections so that amendments enter into force during the period when preparation for elections has commenced.

21. The Constitutional Committee of the Riigikogu has presented an opinion on behalf of the Riigikogu and the majority of the Committee finds that the request of the Tallinn City Council is not admissible and should be dismissed.

According to the majority of the Constitutional Committee members, this constitutes a continuing dispute regarding a request on which the Supreme Court made a judgment on 9 June 2009 (judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-2-09). As the dispute in this court case concentrates, in principle, on the same issues, the opinions noted in the judgment can also be transferred to this court case.

22. The Minister of Justice finds that the request of the Tallinn City Council is not admissible. Providing for the procedure for the election of local government councils is not a local issue and therefore the contested provisions do not infringe the right of self-organisation of the local government. A local government council cannot initiate the review of the constitutionality of legislation of general application in order to protect the subjective rights of voters.

Failure to involve local governments cannot, in itself, constitute the basis to declare a provision to be in conflict with the Constitution. This does not infringe the guarantees of a local government.

In the case of a legal act which is in conflict with the principle of legal clarity and legal certainty, a council must explain how the lack of legal clarity damages the constitutional guarantees of a local government.

23. The Chancellor of Justice finds that, taking account of the nature of the contested provisions, the submitted request is similar to the request for the declaration of invalidity of § 8(4) of the LGCEA which was submitted to the Supreme Court by resolution no. 15 of the Tallinn City Council of 5 February 2009. As regards the earlier request, the Supreme Court found that it is not admissible in respect of § 8(4) of the LGCEA and denied the request (the aforementioned judgment in case no. 3-4-1-2-09). The Chancellor of Justice holds the opinion that the provisions contested in this request do not infringe the right of self-organisation and provides his opinion only on these arguments on admissibility which the applicant has not submitted on the previous occasion.

The applicant has not explained where the applicant sees a conflict between the contested provisions and the constitutional guarantees of a local government. Regardless of the extent to which the freedom of decision of a local government council is restricted by a provision of law, first, the admissibility of a request is conditional on whether the guarantees of the local government may be infringed by the contested provision. The regulation by which the legislator regulates the formation of electoral districts by a local government council (regardless of whether the right of discretion is granted to the local government thereby or regardless of the extent of the granted right of discretion), the guarantee of a local government cannot be infringed.

As regards the statements of the applicant that a local government ensures equal conditions for voters through the formation of electoral districts (essentially the subjective right to vote of voters – active and passive right to vote arising from § 156(2) of the Constitution), in relation to that matter the Supreme Court

has already pointed out the following: “The principles of the electoral system of councils arise from § 156 of the Constitution. The establishment of a detailed procedure for elections, based on the principles of the electoral system, is a national issue. It is the obligation of the state to ensure that elections are carried out in all local governments pursuant to uniform and comparable rules, which are based on the principles established in § 156 of the Constitution.” The cited interpretation is in concordance with the parliamentary reservation or the principle of significance arising from the first sentence of § 3(1) and from § 13(2) of the Constitution, according to which all decisions important in terms of fundamental rights and organisation of the state must be taken by the legislator. Decisions which are important in terms of realisation of the fundamental right to vote must undoubtedly be made by the legislator (taking account of the significance of the fundamental right to vote in a democratic state based on the rule of law).

The right of a council to file appeals cannot arise only from the fact that the legislator establishes regulations regarding only one particular local government (irrespective of whether the legislator mentions the local government directly or specifies a criterion which exists only in the case of that local government). In the case of distinctive local governments, the legislator must have the possibility to establish special regulations (Tallinn is considerably larger than the next largest local government and all other local governments in Estonia). Mentioning a particular local government in the text of an Act independently does not infringe the guarantee, i.e. provided that the object of regulation is not covered by the guarantee.

Regarding the judgment of the Supreme Court *en banc* of 19 April 2005 in case no. 3 4 1 1 05, the Chancellor of Justice finds that on the basis of the position of the Supreme Court *en banc*, upon deciding on the admissibility of the request, it must be verified in the case of each restriction on the right to run as candidate whether infringement of the guarantee of a local government exists or not. Precisely this has been the point of departure for the Constitutional Review Chamber of the Supreme Court and the Chamber has verified, on the basis of the earlier request of the Tallinn City Council, whether the contested regulations could infringe the guarantee of the local government or not (coming precisely to the above conclusion).

Even if one agrees with the interpretation of the Supreme Court *en banc* according to which, in the case of a restriction on the right to run as candidate, it may be possible in some cases that the guarantee of a local government is also infringed thereby, the situation where the representation of different local interests is discussed (as according to the statement of the applicant) is completely different from the situation where the interests of the state and local interests are contradicting (as in the case discussed in the judgment of the Supreme Court *en banc*).

As regards the statements of the applicant regarding the right of appeal of German local governments, the Chancellor of Justice points out that lack of relevant court practise stated by the applicant does not allow to make definite conclusions regarding the correctness of these statements. In addition to that, the regulations which are the basis for the right of appeal are contained in the legislation of different levels in Germany and in Estonia (in the Constitution and in the constitutional act respectively) and are worded differently to a significant extent, which does not allow to transfer them freely to Estonian legislation.

As regards the opinion of the applicant that if there is no representative body elected at uniform elections, there will also be no local government as there is no body to exercise the right of a local government, the Chancellor of Justice finds that if this were so, a local government would also cease to exist if, according to § 52(1) of the LGOA, the council proves to be unable to act and, therefore, the authority of all its members is deemed to terminate prematurely.

24. The Association of Municipalities of Estonia points out in its letter that as the dispute concerns the special procedure of local government council elections in Tallinn, the Association refrains from forming its opinion.

25. The Association of Estonian Cities (AEC) supports the request submitted by the Tallinn City Council. The AEC argues that the guarantees of a local government also include electoral procedures established by the Riigikogu. The same principle is expressed in the Charter. The elections of local government councils

are not deemed to be the exercise of authority of the state. The legitimate organisation of local government council elections is a local issue. The provision which affects the issue must be within the scope of the guarantees of the local government. If it were otherwise, persons designated by the Riigikogu or directly or indirectly influenced by the Riigikogu might start deciding on local issues.

CONTESTED PROVISIONS

26. The second sentence of § 8(1) of the Local Government Council Election Act (RT I 2002, 36, 220; latest amendment RT I 2009, 23, 144), which is titled “Formation of electoral districts” provides for the following: “In local governments with more than 300000 inhabitants, the council shall form eight electoral districts, except in the case specified in the second sentence of subsection (4¹) of this section.”

27. § 8(4) of the LGCEA provides for the following:

“In Tallinn, the council shall form electoral districts by city districts.”

28. The first sentence of § 8(4¹) of the LGCEA provides for the following:

“If city districts have not been formed in Tallinn, electoral districts shall be formed according to the distribution and boundaries of electoral districts at the last local government elections when electoral districts in Tallinn were formed by city districts.”

OPINION OF CONSTITUTIONAL REVIEW CHAMBER

29. The second sentence of § 8(1), § 8(4) and the first sentence of § 8(4¹) of the LGCEA titled “Formation of electoral districts”, which are contested in the request of the Tallinn City Council, provide for the bases of formation of electoral districts in the city of Tallinn. In a broader sense, the request concerns the provisions regulating the procedure for the election of local government councils.

30. The Tallinn City Council has submitted a request concerning a provision with the same object of regulation also on 5 February 2009. § 8(4) of the LGCEA contested in this request (in the wording valid from 17 December 2008 until 1 May 2009) also provided for the formation of electoral districts in Tallinn. This subsection differs from the valid version only in that according to the legislation in force, formation of electoral districts by city districts need not be based on the principle that one electoral district is formed in one city district.

31. The Constitutional Review Chamber of the Supreme Court found regarding the request referred to in the previous paragraph in case no. 3 4 1 2 09 of 9 June 2009 (paragraphs 25 38), that provision of the bases for the formation of electoral districts is not a local issue and therefore it is not included in the area of protection of the right of self-organisation. Therefore, it is impossible to immediately infringe the right of self-organisation of a local government by this provision.

Additionally, the Chamber found that the previous version of § 8(4) of the LGCEA did not influence the independence of deciding on local issues even indirectly. This provision could in no way restrict the possibilities of members of councils to decide on local issues independently from the central authority of the state and without the state interfering with the decision-making process. Members of a council have the right to make decisions independently in local governments with one electoral district and in local governments with several electoral districts.

Taking that into consideration, the Chamber stated that the request of the Tallinn City Council is not admissible as regards the provisions regarding the formation of electoral districts and denied this part of the request (paragraph 38 of the aforementioned judgment no. 3-4-1-2-09).

32. In this court case, the Tallinn City Council has once again contested provisions which concern the bases for the formation of electoral districts. The Chamber reaffirms its judgment referred to in the previous paragraph and finds that the request is not admissible as regards the specified provisions.

33. The Chamber considers it unnecessary to repeat all justifications set out in the abovementioned judgment

no. 3-4 1-2-09. As regards the arguments which are set out in the request and which concern deviation from the judgment of the Supreme Court *en banc*, inclusion of formation of electoral districts among local issues, indirect infringement of the right of self-organisation and protection of the right of voters to vote, the Chambers points out the following.

34. The Chamber does not agree with the opinion of the Tallinn City Council that the position expressed in paragraph 37 of the abovementioned judgment no. 3-4-1-2-09 differs from the position which the Supreme Court *en banc* has taken in paragraph 17 of judgment no. 3-4-1-1-05.

In this paragraph, the Supreme Court *en banc* found that “restrictions on the right to run as candidate at local government elections may also infringe the principle of autonomy of local governments”. Thereafter, the Supreme Court *en banc* explained that the principle of autonomy is expressed in § 154 of the Constitution which provides that local governments decide and organise local issues independently pursuant to law. The principle of independent decision-making means that members of local government councils can make decisions independently from the central authority of the state and put local interests first. Further, the Supreme Court *en banc* assessed whether provisions contested in this specific case (which provided for the definition, membership and foundation of political parties and did not allow election coalitions to participate as candidates at local government council elections) unfavourably influenced independent decision-making on local issues and the uniform right to run as candidate. In paragraph 22 of the abovementioned judgment no. 3 4 1 1 05, the Supreme Court *en banc* stated that the provisions which in conjunction preclude submission of a candidate list by inhabitants of a rural municipality or city, who wish to represent the autonomous interests of the community at local government elections restrict (or infringe) the uniform right to run as candidate and also the principle of local government’s autonomy.

Therefore, the Supreme Court *en banc* first noted that restrictions on the right to run as candidate may affect the autonomy of a local government or the right of self-organisation arising from § 154 of the Constitution, thereafter the Supreme Court *en banc* assessed the influence of the restriction to run as candidate arising from specific provisions firstly on the uniform right to run as candidate and secondly on the right of self-organisation, and finally found that the specific provisions really infringe the specified rights. In this court case, the Supreme Court did not adjudicate that any provisions pertaining to the organisation of local government council elections or the right to vote in each case also infringe the right of self-organisation of the local government. It may be concluded from the judgment of the Supreme Court *en banc* that a court must assess every time whether the provisions containing restrictions on the right to run as candidate may also infringe the right of self-organisation of the local government.

In case no. 3-4-1-2-09, the Chamber assessed the possible infringement of the right of self-organisation arising from the provision regarding formation of electoral districts and found that this provision does not reduce the independence of persons running as candidates or persons elected upon deciding on and organisation of local issues (paragraph 37 of abovementioned judgment in case no. 3-4-1-2-09). Independence upon deciding on and organisation of local issues means deciding on local issues independently from the central authority of the state in a local government council, which has been implied in paragraph 17 of the judgment of the Supreme Court *en banc*. Members of councils have the right to make independent decisions in local governments with one electoral district and local governments with several electoral districts (paragraph 35 of abovementioned judgment in case no. 3-4-1-2-09).

35. As regards the arguments of the applicant stating that formation of electoral districts is a local issue (see second sub-indent of paragraph 11 of this judgment), the Chamber agrees with the Tallinn City Council that conduct of council elections is a local issue. The function of the state authority is to establish, throughout the territory of the state, a uniform framework for the conduct of council elections arising from which different local governments organise elections (see paragraph 33 of abovementioned judgment no. 3-4-1-2-09). Such framework immediately concerns exercise of the right to vote of persons and, taking into account the significance of these rights in a democratic society, issues relevant to the exercise of these rights must be regulated by the legislator. This interpretation is based on the first sentence of § 3(1) of the Constitution and on the principle arising from § 13(2) of the Constitution that all decisions having a significant effect on

fundamental rights and organisation of the state must be made by the legislator. Establishment of a regulation for the formation of electoral districts (provided for in the second sentence of § 8(1), § 8(4) and in the first sentence of § 8(4¹) of the LGCEA) is therefore a national issue.

36. An example provided for above in the third sub-indent of paragraph 11 is not connected with the question of whether the provisions regulating the procedure for the election of a council (more precisely the formation of electoral districts) concern local issues or national issues. Nevertheless, the Chamber admits that if the Riigikogu decides to regulate the formation of councils in the manner described by the applicant, then it may constitute interference with independent decision-making on local issues. The Riigikogu has not done that as regards the provisions contested in this court case – these provisions do not create a situation described by the applicant.

37. The Chamber also repeats its earlier position that a situation where local governments themselves gain the right to form the bases for the formation of their authorities would be contrary to the principle of unitary state. This position also concerns the fact that the contested provisions regulate local issues (see paragraph 12 above).

The above position essentially means that it will be contrary to the principle of unitary state if matters regulated in the contested provisions are deemed to be local issues. If a local government states that it has the right to demand a legal act to be declared to be in conflict with the Constitution, then the local government can do so with a justification that this infringes its constitutional guarantees or, primarily, its right to independently decide on and organise local issues (right of self-organisation). This means that the contested legal act must regulate local issues. But regulation of local issues initially belongs into the competence of a local government. The state may regulate these issues only by an Act which has been established in order to achieve legitimate aims and is proportionate for that aim. This means that by stating that the request is admissible, the local government also states that regulation of the field regulated in the contested provisions was initially its right and duty. The Tallinn City Council may agree with the fact that the Riigikogu regulates the formation of electoral districts and may refrain from claiming the right to form electoral districts, but interference with this regulation by a request to declare the regulation to be contrary to the Constitution is impossible unless the regulation regulates the field which is the object of its self-organisation. Thus, a local government may demand declaration of invalidity of legislation due to it being contrary to the right of self-organisation only if, arising from § 154(1) of the Constitution, the local government principally has the right to establish such regulation.

38. The Chamber accepts that theoretically it is possible to imagine situations described by the applicant above in the third sub-indent of paragraph 10, where electoral districts for the election of a council are formed in a way that will result in the election of persons who have to decide local issues based on the compulsory instructions received from the state authority. In the case of provisions contested in this court case, this is not the case and there is no indirect danger to the right of self-organisation.

39. The Tallinn City Council has also submitted several arguments which concern violation of the principle of uniformity of the elections and the rights of voters and their relation to the right of self-organisation.

The Chamber notes that it cannot be concluded from the explanations provided in the second sub-indent of paragraph 10 above that the provisions regulating the formation of electoral districts could infringe the right of a local government to decide independently and organise all local issues. The possible over-representation of the interests of one city district as compared to the under-representation of the interests of another city district in the council does not render members of the council representing these interests dependent on the state authority upon making their decisions. Regulation of the formation of electoral districts does not constitute an interference in the independence of a local government council upon resolution of local issues. The right of self-organisation protects a local government from disproportionate interference by the state with its activities when deciding on local issues.

The Chamber adds that the provisions which influence the representativeness of a council may infringe the

rights of persons entitled to vote and run as candidates in the local government.

40. The Chamber agrees with the position that violation of persons' uniform right to vote does not preclude infringement of the right of self-organisation of the local government. The possibility of infringement of the right of self-organisation is precluded in this court case by the fact that the contested provisions which allegedly violate the principle of uniformity do not concern any local issues or the independence of the council upon making decisions on these issues.

41. As regards the effective protection of the rights of voters in the case when a local government cannot contest regulations concerning the organisation of elections which infringe the principle of uniformity, then the Chamber has already discussed the statement in the second sub-indent of paragraph 36 of the abovementioned judgment no. 3-4-1-2-09. Should the voter find that, upon violation of the right to vote, he or she has no other effective way to exercise the right to judicial protection ensured to him or her by § 15 of the Constitution, then the person has the right of recourse to the Supreme Court (see judgment of the Supreme Court *en banc* of 17 March 2003 in case no. 3-1-3-10-02, paragraph 17).

The Chamber notes that a request concerning a regulation which allegedly violates the principle of uniformity can principally be submitted also by the Chancellor of Justice and a person may submit a request with the same content also in administrative court proceedings or in election appeal proceedings. Proceedings regarding a request submitted by a local government can be conducted only when it meets the conditions set in § 7 of the CRCPA (Constitutional Review Court Procedure Act). The Supreme Court cannot accept a complaint of a local government for proceeding only due to the fact that the Chancellor of Justice or an individual has for some reason not wished to question the conformity of the contested provisions with the Constitution by using his or her competence or by stating that his or her subjective rights have been violated. The Supreme Court can conduct proceedings only regarding requests which are submitted by the entitled subjects.

42. As regards the statement of the Tallinn City Council that the request should be admissible also arising from the source of § 7 of the CRCPA in the Constitution of the Federal Republic of Germany and the practice of the German Federal Constitutional Court which has been developed on the basis of the Constitution of the Federal Republic of Germany, the Chamber notes that the Supreme Court of the Republic of Estonia can only make its judgments on the basis of the Constitution of the Republic of Estonia. The comparative law arguments may have weight upon determining the content of the provisions of the Constitution of the Republic of Estonia but they cannot be used to constitute binding instructions for Estonian courts.

43. Taking account of the aforementioned, the second sentence of § 8(1), § 8(4) and the first sentence of § 8(4¹) of the LGCEA cannot infringe the constitutional guarantees of a local government. Therefore, the request of the Tallinn City Council is not admissible and Chamber denies the request.

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