Constitutional judgment 3-4-1-9-09

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT**

No. of the case	3-4-1-9-09
Date of decision	30 September 2009
Composition of court	Chairman Märt Rask, members Peeter Jerofejev, Hannes Kiris, Indrek Koolmeister and Priit Pikamäe.
Court Case	Request of the Koigi rural municipality council to declare unconstitutional and repeal the second sentence of § 20(3) and § 34(2) of the Earth's Crust Act.
Basis of proceeding	The request of the Koigi rural municipality council of 14 April 2009.
Hearing	Written procedure.
DECISION	**To dismiss the request of the Rapla rural municipality council.**

FACTS AND COURSE OF PROCEEDING

1. On 23 November 2004 the Riigikogu passed the Earth's Crust Act (RT I 2004, 84, 572; hereinafter "the ECA", which entered into force on 1 April 2005.

2. On 23 November 2005 the Hetkinvest OÜ [private limited company] submitted an application to the Järvamaa environmental service for a geological exploration permit (hereinafter "explorations permit") on the Paemurru exploration area in Koigi rural municipality. By its decision no. 38 of 14 September 2006 the Koigi rural municipality council did not consent to the issue of the explorations permit because the extraction of mineral resources was not in conformity with the development plan or the comprehensive plan of the rural municipality, which was being prepared at that time. Moreover, the exploration area is situated in Pandivere water protection area and mining could endanger the preservation of the groundwater level. The

immediate neighbours of the exploration area and the owners of registered immovables within the territory that would be affected by a would-be quarry also expressed their opposition to the mining.

3. By its order no. 90 of 21 February 2008, on the basis of the second sentence of § 20(3) of the ECA, irrespective of these objections, the Government of the Republic consented to issue to Hetkinvest OÜ the explorations permit in the Paemurru exploration area.

4. On 28 March 2008 the Koigi rural municipality council filed an action with the Tallinn Administrative Court applying for the annulment of the order of the Government of the Republic. On 3 April 2008 the Tallinn Administrative Court returned the action without a hearing on the basis of § 11(31)5) of the Code of Administrative Court Procedure (hereinafter "the CACP"). The administrative court was of the opinion that the order of the Government of the Republic which included the consent to issue an explorations permit constitutes a procedural act within the proceeding of issuing an administrative act (permit), which can not be contested separately from the final administrative act.

5. By its order of 22 September 2008 the Järvamaa environmental service issued to Hetkinvest OÜ the explorations permit for geological exploration in the Koigi mineral deposit of Paemurru exploration area. By the same order the environmental service decided not to initiate environmental impact assessment and determined the conditions of the explorations permit.

6. On 29 October 2008 the Koigi rural municipality council filed an action with the administrative court applying for the annulment of the order of the environmental service and of the explorations permit issued on the basis thereof. On 20 February 2009 the Tallinn Administrative Court accepted the action as administrative case no. 3-08-2158.

7. On 9 April 2009 the Koigi rural municipality council decided, on the basis of § 7 of the Constitutional Review Court Procedure Act (hereinafter "the CRCPA") to request the Supreme Court that it declare § 20(3) and § 34(2) of the ECA unconstitutional and invalid. The Supreme Court received the request on 14 April 2009. In the specifications to the request, submitted on 10 August 2009, the Koigi rural municipality council requests the compensation of the legal aid costs relating to the proceeding in the amount of 30 766 kroons from the state budget.

8. By its ruling of 21 April 2009 the Tallinn Administrative Court decided to stay the proceeding of administrative case no. 3-08-2158 until the entry into force of relevant judgment rendered in a constitutional review proceeding.

JUSTIFICATIONS OF PARTICIPANTS IN THE PROCEEDING

9. The Koigi rural municipality council considers its request admissible. The contested provisions infringe the right of self-management, because the local government can no longer decide on giving its consent to the issue of explorations permits and to mining as a local issue. Furthermore, the local government has lost its independence in regard to these issues, because its consent is substituted by the consent of the Government of the Republic.

10. The petitioner is of the opinion that as regards mineral deposits of local importance (§ 3 of the ECA) the granting of consent to issue an explorations permit and an extraction permit is a local issue. The referred permits and the procedures for the issue thereof are closely connected. The petitioner argues on the basis of the State Audit Office control report "State regulation of extraction of natural construction materials" (Tallinn: Riigikontroll, 2009) that as a rule the issuing of an explorations permit is followed by the issuing of an extraction permit. Indeed, a local government does not have to decide on the issuing of a permit, but it must have a possibility to refuse to grant its consent in a manner that is actually meaningful and has consequences.

The right of a local government to refuse to issue a permit for geological investigation or an exploration permit, arising from § 20(1)9) of the ECA, and the right not to consent to the issue of an extraction permit,

arising from § 34(1)16) of the same Act constitute issues that by nature fall within the competence of the local government also for the purposes of § 6(3)1) of the Local Government Organisation Act (hereinafter "the LGOA" – RT I 1993, 37, 558; 2007, 44, 316).

Also, pursuant to § 4(2) of the Planning Act (hereinafter "the PA" – RT I 2002, 99, 579) the shaping of public space through construction and planning activities constitutes an issue within the local governments' self-management.

The petitioner points out further that it appears from the referred control report of the State Audit Office that the state has not regarded the exploration and extraction of mineral resources as an important national issue. The exploration and extraction activities are based on private interests. The differentiation between mineral deposits of national and local importance in § 3(1) of the ECA would be meaningless if the local government did not have the right to decide on granting consent to the activities in a mineral deposit of local importance.

11. As regards the interference with the right of self-management the petitioner argues that, indeed, the infringement serves a legitimate aim – to guarantee the possibility of long-term use of mineral resources at the same time preserving the natural state and further usability of the earth's crust – but substitution of the opinion of the Government of the Republic for the refusal of a local government to grant consent is not suitable, necessary or reasonable for the achievement of this aim in the case of local mineral deposits.

The restriction is not suitable because it achieves no aim and simply ignores the opinion of the local government. Furthermore, the rural municipality development plan does not provide for new geological explorations or establishment of new mines. Neither is the restriction necessary, because the local government, too, represents a public interest and therefore can decide on the issuing of permits relating to extraction bearing in mind the referred aim. In addition, the aim is achievable by other means such as the duty of the local government to set out the reasons why it refuses to grant its consent. The valid law establishes no obligation to give reasons. Such obligation to give reasons could very well be a part of planning proceeding, which is the most suitable avenue for the prevention of possible conflicts between the state and the local governments. In any case, the alleged deficit of mineral resources can not be regarded as a sufficient reason for interference with local issues to the extent caused by mining activities and related exploration activities.

12. The Koigi rural municipality council is also requesting, on the basis of § 63(1) of the CRCPA, that its legal aid costs in the amount of 30 677 kroons be covered from the state budget. A small local government can not initiate a constitutional review proceeding through its own officials only, because this requires knowledge different from that required for daily work of the rural municipality.

13. On behalf of the Riigikogu an opinion was submitted by the Constitutional Committee thereof who points out firstly that the conducting of geological investigations or explorations is not a local issue. The issuing of permits for such investigations and explorations has been placed within the competence of the state by law; this shows that the state has considered this sphere to be an issue important for the state. Furthermore, § 5 of the Constitution establishes that the natural wealth and resources of Estonia are national riches, which means that these are the resources serving the interests of the entire state. The fact that the Earth's Crust Act divides the mineral deposits into those of state and of local importance is irrelevant because, in any case, bedrock minerals belong to the state. Although this is a national issue, the sphere still does affect the duties of the local government in the organisation of the public space, the provision of public services and amenities, physical planning and environmental protection. As an explorations permit and extraction permit is issued by a state authority, this also amounts to a restriction of the local government's right of self-management in the referred spheres. That is why the request of the Koigi rural municipality council is admissible.

Nevertheless, the infringement of the right of self-management is a constitutional one. The aim of the infringement is to ensure economically efficient and environmentally sound use of the earth's crust taking into account the needs of the state. The restriction of the right of self-management is suitable and necessary

for the achievement of this aim. The restriction is also a reasonable one, because the local governments are requested to give their opinions for the determination of the conditions of permits.

The opinion of the Constitutional Committee also sets out the opinion of the Environmental Committee of the Riigikogu. The latter, too, is of the opinion that § 5 of the Constitution gives rise to the sole conclusion that the management of natural wealth as natural riches can only be the duty of the state, it requires uniform approach throughout the state, and this can not be achieved through the decisions taken on local level. This is not a local issue also because of the properties of mineral resources – the use of many resources, due to their properties, is not related to the administrative territory of a given rural municipality.

14. The Minister of Justice is of the opinion that the request is admissible and that the contested provisions do infringe constitutional guarantees of the local government, yet the provisions are not unconstitutional. The legislator's aim in the case of this infringement is to ensure that the interests of the state are taken into account in the exploration and extraction of the earth's crust. The provisions infringing the interests of local governments avoid a situation where a local authority which considers only local interests can prevent the issuing of permit which is important for the state. The state must have the final competence in the exploration and use of the earth's crust. Local governments can protect their interests by other means, e.g. by intervening in the proceeding of a construction permit relating to the construction of a mine. Furthermore, this is also possible in the proceeding for environmental impact assessment. The issuing of an investigation permit, explorations permit or an extraction permit can not create a legitimate expectation for the holder of a permit of acquiring also the subsequent permits.

15. The Minister of the Environment is of the opinion that the contested provisions are constitutional.

The investigation and use of the mineral resources is defined as a national issue by the Earth's Crust Act as well as by the Government of the Republic Act. As a rule, these issues can not be resolved on the local level, neither are these issues related to local community only, because the issues do not arise from the local community. Furthermore, a local government is not competent to consider the broader interest that exceed the administrative territory of the local government. The spread of a mineral resource in Estonia may be extensive, but the extraction thereof may not be technically and economically possible or justified everywhere. The state must guarantee that the extraction takes place in the most suitable areas.

Local governments can participate in the proceeding of permits relating to extraction through expressing their opinions. The issuer of permits must take these opinions into account among other considerations, at the same time it must bear in mind other essential facts relating to the permits and broader interests. A local government can not weigh the interests of a county or of the state. For example, a local government can not take into account the deficiency of mineral resources on the level of the state or of another broader region. As the state can not control the spread of mineral resources and as it can do nothing to direct extraction into a territory of such a local government that agrees with the extraction, the state must be able to take final decisions regarding these issues.

The restriction imposed by the contested provisions is a proportional one, because it allows to take into account both local and broader interests upon taking final decisions. The restriction is also a suitable one, because a local government lacks both the knowledge and the competence to decide on the needs of the state or the specific issues concerning the earth's crust. There are no other measures that would be less cumbersome.

16. The Chancellor of Justice is of the opinion that the second sentence of § 20(3) of the ECA is in conflict with the Constitution to the extent that it allows, in regard to limestone, to substitute the consent of the Government of the Republic for the refusal of a local government. § 34(2) of the ECA is in conflict with the Constitution to the extent that it allows, in regard to a mineral deposit of local importance, to substitute the consent of the Government of the Republic for the refusal of a local government.

The Chancellor of Justice is of the opinion that taking into account the valid law the granting of a consent to

the issuing of an explorations permit and an extraction permit is a local issue in relation to layers of limestone. In the case of explorations permit this is so because after the issuing of an explorations permit a local government can not in a subsequent proceeding prevent the issuing of an extraction permit with the justification that the extraction would excessively deteriorate the physical and social environment of the surrounding population, whereas the exploration activities – at least the exploration of layers of limestone do have significant environmental impact and the impact is directly manifest in the territory of the local government. As the impact of extracting is significant in its location, the granting of consent to the extraction of limestone is also a local issue.

The substitution of the consent of the Government of the Republic for the refusal of a local government to grant consent undermines the position of the local government also in the proceeding for the issuing of a permit. That is why this amounts to an infringement of the right of self-management.

Nevertheless, the Chancellor of Justice expresses his doubt as to the admissibility of the request because the petitioner can invoke the unconstitutionality of the second sentence of § 20(3) of the ECA also in the pending administrative court proceeding concerning legislation of specific application. The declaration of admissibility of this request would extend the rights of the local government in comparison to other addressees of fundamental rights. That is why the Chancellor of Justice requests the Supreme Court to form an opinion regarding whether and how a pending court procedure or an interim legislation ranking lower than parliamentary Acts affects the admissibility of requests.

The Chancellor of Justice considers the aim of the infringement to be the desire to give the state the right to take final decisions in order to ensure a uniform nationwide policy of use of natural resources which takes into account all aspects, as required by § 5 of the Constitution.

The solution chosen by the contested provisions is suitable and necessary for the achievement of the aim. To guarantee the right of the state to take final decisions there is no other effective measure that would restrict the local government’s right of self-management to a lesser degree.

Nevertheless, the second sentence of § 20(3) and § 34(2) of the ECA are not reasonable restrictions of the right of self-management. The infringement of the right of self-management is an intensive one because a local government has no other effective possibility to point out in the proceeding of an exploration permit or an extraction permit that the physical and social environment will deteriorate. Furthermore, the issuer of a permit can not refuse to issue a permit with the justification that extraction is in conflict with the development plan of a rural municipality. At the same time, the retention of the right of the state to have the final say in the issues under discussion is an important aim, arising from § 5 of the Constitution. At present there are no procedural rules enabling a local government to be sure that the local physical and social environment is sufficiently taken into consideration upon issuing exploration and extraction permits.

As the exploration of a layer of limestone can have a significant impact on the local physical and social environment and the local government can not assert the interests of the environment in no other way than by refusal to grant a consent to the issuing of a permit, the second sentence of § 20(3) of the ECA is not proportional. § 34(2) is not proportional in regard to mineral deposits of local importance.

The Chancellor of Justice adds that in regard to mineral resources other than limestone the exploration methods may differ from the methods employed in the exploration of limestone layers, and therefore the environmental impact of these explorations may differ, too. Thus, it may prove necessary to from an opinion regarding also the other mineral resources (oil shale, phosphate rock, crystalline building stone, sand and gravel, clay, peat, lake mud, lacustrine lime, sea mud).

Lastly, the Chancellor of Justice points out that it is possible, under § 63(1) of the CRCPA, to satisfy the request of a participant in the proceeding to have the legal aid costs covered.

CONTESTED PROVISIONS

17. The second sentence of § 20(3) of the ECA reads as follows:

"§ 20. Refusal to issue permit for geological investigation and exploration permit

(3) [---] Upon disagreement, a permit for geological investigation for prospecting or an explorations permit may be issued with the consent of the Government of the Republic."

18. § 34(2) of the ECA reads as follows:

"§ 34. Refusal to issue extraction permit

[---]

(2) In the case specified in clause (1) 16) of this section, an extraction permit may be issued with the consent of the Government of the Republic."

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

19. Under § 7 of the CRCPA a local government council may submit to the Supreme Court a request to repeal an act which has entered into force or a provision thereof it is in conflict with constitutional guarantees of the local government.

20. Consequently, the Supreme Court can hear on the merits only such requests that meet the following three requirements: firstly, the request must be submitted by a local government council; secondly, the request must argue that a legislation referred to in § 7 of the CRCPA or a provision thereof is in conflict with constitutional guarantees of the local government, and thirdly, the infringement of constitutional guarantees of the local government by the contested legislation must be possible (see the Constitutional Review Chamber of the Supreme Court (hereinafter "the CRC") judgment of 16 January 2007 in case no. 3-4-1-9-06, paragraph 16).

21. The Koigi rural municipality council argues in its request that the second sentence of § 20(3) and § 34(2) of the ECA infringe the local government's right of self-management, which arises from § 154(1) of the Constitution. Consequently, the first two requirements referred to in the preceding paragraphs are met. Next, the Chamber shall analyse whether the third requirement is met, i.e. whether the contested provisions are capable of infringing the local government's right of self-management.

22. Pursuant to § 154(1) of the Constitution the local government's right of self-management means the right to resolve and manage all local issues independently pursuant to law. The essence of this right is the discretion of the local government to decide and choose in the resolution of local issues (the CRC judgment of 16 January 2007 in case no. 3-4-1-9-06, paragraph 22).

Proceeding from the substantive criterion local issues are the issues arising from and pertaining to a local community and are not – as regards the formal criterion – subjected into the competence of a state authority by the Constitution (the CRC judgment on 8 June 2007 in case no. 3-4-1-4-07, paragraph 12).

23. In order to ascertain whether the request of the Koigi rural municipality is admissible from the aspect of infringement, the object of regulation of the contested provisions is to be ascertained first. Thereafter it can be analysed whether the object of regulation constitutes a local issue to which the right of self-management of the local government is extended.

24. The second sentence of § 20(3) of the ECA gives the Government of the Republic the right to grant its consent to issue a permit for geological investigation for prospecting or an explorations permit, and § 34(2) of the ECA gives the Government of the Republic the right to grant its consent to issue an explorations permit when a local government has refused to grant its consent to issue a permit. When a local government

refuses to grant its consent the authority who finally issues the permits (depending on the object of a permit either the Ministry of the Environment or the Environmental Board) must refuse to issue the permits under discussion (§ 20(1)9) and § 34(1)16 of the ECA).

Consequently, the contested provisions regulate the decision-making concerning the exploration and extraction of mineral resources. The declaration of unconstitutionality and repeal of the contested provisions would mean that the local government will have the right to make the final decision concerning the exploration and extraction of mineral resources. In this context it must be underlined that in the formal sense the decision not to issue a permit is made by the authority issuing permits, but in the case when a local government has refused to grant its consent the authority has no discretion at all. At the same time, when the Government of the Republic decides to grant its consent to the issue of a permit irrespective of the local government's refusal, this does not give rise to an obligation for the authority issuing the permits to automatically issue one.

25. The Chamber is of the opinion that the taking of final decisions on the exploration and extraction of mineral resources is not a local issue.

Pursuant to § 5 of the Constitution the natural wealth and resources of Estonia are national riches which shall be used economically. There is no doubt that mineral resources, too, constitute the natural wealth and resources for the purposes of § 5 of the Constitution, and as such they form a part of national riches. Pursuant to the Constitution the planning of the economical use of mineral resources can not be performed within the limits of a local government, instead it must be based on the interests of the state and on the need to guarantee the economical use of mineral resources throughout the state. An individual local government does not have a comprehensive overview of the spread of mineral resources in the state and, therefore, of the details pertaining to the exploration and extraction of mineral resources that would enable the local government to make such a final decision on granting a consent to extraction that would be adequate from the aspect of the entire state. That is why it has to be concluded that under the Constitution the deciding on the use of mineral resources is a national issue. If an issue is, under the Constitution, a national one, the Chamber has no ground to review whether that issue might in substance constitute a local issue.

It proceeds also from § 61(1) of the Government of the Republic Act that decisions on the exploration and extraction of mineral resources are within the competence of the state. Pursuant to this provision the area of government of the Ministry of the Environment shall include the management of the use, protection, recycling and registration of natural resources, nature and marine research, geological, cartographic and geodetic operations. The Earth's Crust Act also indicates that the deciding on the use of mineral resources is within the competence of the state. Namely, § 4 of the ECA establishes that, as a rule, mineral resources belong to the state. There is no doubt that it is the duty of the state to decide on the use of the mineral resources that it owns.

Deciding on the exploration and extraction of mineral resources does not become a local issue solely because a mineral deposit is of local importance. The division of mineral deposits into those of national and local importance (§ 3 of the ECA) simply determines the national authority who shall take decisions concerning the mineral deposits (see § 14(2) and (3), § 28(4) and § 59(2) of the ECA) and the period of validity of extraction permits (§§ 37 and 38 of the ECA). It unambiguously follows from the Earth's Crust Act that the decisions concerning the exploration and extraction of mineral resources shall be made on the state level either in the Ministry of the Environment or in an authority within the area of government of the Ministry.

The petitioner argues that local governments are capable of taking the decisions pertaining to economical use of national riches, because they represent public interests. The Chamber agrees that the local governments do represent public interests which may overlap with the interest of the state. At the same time, local governments have specific public interests arising from local communities which may be in opposition to the interests of the state. In such a situation the resolution of conflicts is fostered if the state has the right to take final decisions on the exploration and extraction of mineral resources.

26. In the case under discussion there is a situation wherein the deciding on the exploration and extraction of a mineral resource as a national issue does indeed unfavourably affect the independent resolution and management of local issues.

A permit for geological investigation and an exploration permit or an extraction permit can not be issued without the consent of the Government of the Republic, if the local government has refused to give its consent to the issuing of the permit. When a permit is issued due to the consent of the Government of the Republic then on the basis of the results of the geological investigation or geological exploration the Minister of the Environment can register mineral deposits (§ 5(2) of the ECA). Such a decision is not preceded by public disclosure and interested persons, including local governments, are not involved in taking such decisions. Consequently, a local government can not influence the decisions on registering mineral deposits. Furthermore, on the basis of the referred explorations the Minister of the Environment decides to which category of mineral reserves the explored mineral resource belongs (see § 10 of the ECA). If a mineral reserve in state ownership is located within the boundaries of a county or a local government, § 63(4) of the ECA and § 17(2)3) of the Planning Act prescribe that the local government shall obtain the approval of the Ministry of the Environment for the comprehensive and detailed plans before their establishment. The comprehensive and detailed plans, being part of the spatial planning system, are the main instruments, besides various development plans, through which a local government can exercise its right of self-management. When preparing these plans the local government co-ordinates and integrates the development plans of various fields in order to make long-term spatial plans which, in a balanced manner, take into account the long-term directions in and needs for the development of economic, social, cultural and natural environment (§ 1(3) of the PA).

Pursuant to § 6(1) of the LGOA and § 4(2) of the Planning Act (hereinafter “the PA”) spatial planning through comprehensive and detailed plans, involving the balancing of environmental, cultural, economic and social interest is a local issue and is included in the area of protection of the right of self-management. Consequently, the consent of the Government of the Republic to the issuing of the referred permits is one phase in the process of taking the decisions that restrict the freedom of local governments in taking planning decisions by comprehensive and detailed plans. The Government of the Republic’s granting of consent to the issuing of extraction permits infringes the local government’s right of self-management more intensively, because on the basis of such a permit the territory of the local government can be changed irreversibly.

Consequently, it is to be concluded that the contested provisions infringe the local government’s right of self-management in the area of spatial planning.

27. Consequently, the request of the Koigi rural municipality council is admissible. The Chamber is of the opinion that this admissibility is not affected by the fact that the petitioner has the possibility to contest the constitutionality of the second sentence of § 20(3) of the ECA within the pending administrative court proceeding. Firstly, the request also contests the constitutionality of § 34(2) of the ECA. § 34(2) of the ECA, pertaining to extraction permits, is not a relevant norm in the administrative court procedure wherein only the issuing of an explorations permit has been contested. Secondly, § 7 of the CRCPA clearly gives local governments – in comparison to other addressees of fundamental rights a broader right to contest the constitutionality of legislation. If a submitted request meets the requirements established by the Act, the Supreme Court must accept the request. The Chamber points out further that it would also be in conformity with the Constitution and with Article 11 of the European Charter of Local Self-Government (RT II 1994, 26, 95) if the local governments had direct access to the Supreme Court for initiation of a constitutional review proceeding only if they had no other effective remedy to protect their constitutional rights.

28. Although the contested provisions infringe the right of self-management, this does not mean that they violate the right and are therefore in conflict with the Constitution. The local governments’ right of self-management is not an absolute right, yet the powers of the state may interfere with it solely by such measures that are proportional, that serve a clearly defined legitimate aim (see the CRC judgment of 9 June 2009 in case no. 3-4-1-2-09, paragraph 32).

29. The explanatory letters to the valid and the previous version of the Earth's Crust Act (RT I 1994, 86/87, 1488) do not indicate what the aim of the infringement of the right of self-management was. The Chamber considers the aim to be the need to ensure that the state has the right to take final decisions in the issues concerning the exploration and extraction of mineral resources, i.e. the issues relating to economical use of national riches. Such aim arises first and foremost from § 5 of the Constitution.

30. There is no doubt that the solution chosen by the contested provisions is a suitable measure. This precludes the refusal to issue a permit due to the opposition of a local government only.

31. The Chamber considers the measure to be necessary, too. This is an effective solution, because it overrides the veto of a local government to the issuing of a permit and, thus, precludes the transferral of the right to take final decisions from a state authority to a local government. The participants in the proceeding have not pointed out any other effective means for the achievement of this aim. The obligation of a local government to set out the reasons for refusal to grant its consent, which the petitioner considers to be a solution as effective but less burdening, is an obligation that a local government already has proceeding from the principles of sound administration, even though this has not been stipulated in the Earth's Crust Act expressis verbis.

32. As for the reasonableness the Chamber argues the following. The restriction of the right of self-management by the contested provisions is not a very intensive one. Firstly, the fact that the Government of the Republic grants its consent does not determine whether a permit will in fact be issued or which requirements will be established in such a permit. Secondly, a local government can submit to the authority who is issuing the permits its environmental and social considerations either in an open administrative proceeding for the issuing of permits or in the environmental impact assessment proceeding, if it is organised for the issuing of a concrete permit. The authority who is issuing permits has the obligation to take such considerations into account, and – on the basis of § 35(2)8) of the ECA – the authority may set requirements to ensure the protection of the earth's crust and rational use of the mineral reserves and to reduce the adverse impact on human health, property and the environment arising from extraction. Thirdly, a local government can defend its interests through contesting the final decision on the issuing of a permit and the permit itself in the court. Fourthly, the issuing of permits does not inevitably mean that the actual adverse impact will become apparent on the territory of the local government. For example, it may well become apparent as a result of a geological investigation and exploration that the mineral reserves are not of suitable quality and the reserves shall not be registered. The extraction activities may be precluded e.g. because some other necessary permits will not be issued to the company.

33. The Chamber is of the opinion that the infringement under discussion can only be reasonable if upon granting its consent the Government of the Republic examines the national social, environmental or economic interests that give rise to the necessity to consider the issuing of permits concerning the territory of a concrete local government. This, in turn, is impossible if the local government, upon refusing to grant its consent, does not set out the interests of the local government and the local community because of which geological investigations or explorations should not be carried out or a mine should not be established in the concrete location.

Furthermore, the Chamber argues that the declaration of reasonableness of this infringement requires that in addition to the possibility to participate in a proceeding a local government must be able to contest the consent of the Government of the Republic in the court. The Chamber is of the opinion that in order to guarantee the possibility of judicial review of violations of the local governments' right of self-management the provisions regulating recourse to the administrative court – in regard to the Government of the Republic order on granting its consent to the issuing of a permit for geological investigation for prospecting or an explorations permit or an extraction permit irrespective of the objection of the local government – must be interpreted to the effect that such an order can be contested independently of final administrative legislation. It is true that it is the activities carried out on the basis of a final permit, especially of an extraction permit, that most intensively infringe the local government's right of self-management, yet is the consent of the

Government of the Republic that opens up the avenue for such an infringement. A local government must be able to effectively assert its rights as early as possible in the issuing of permits proceedings because upon taking final decisions on the issuing of permits the interests of the local government may prove to have less weight as compared to other considerations that have become apparent during the proceedings. The interpretation of the provisions which regulate recourse to the administrative court to the effect that the consent of the Government of the Republic may be contested independently of the final permit is to be preferred to any other possible interpretations, because the former guarantees the broadest possible protection of different constitutional values (see the Supreme Court en banc judgment of 22 February 2005 in case no. 3-2-1-73-04, paragraph 36). On the one hand, this will give the state the right of final decision in the issues concerning exploration and extraction of mineral resources, on the other hand this will guarantee more extensive protection of the local governments' constitutional right of self-management.

The Administrative Law Chamber of the Supreme Court, too, has held in its decisions that the right of a local government to file actions with the administrative court for the repeal of such decisions taken in environmental matters or for the declaration of unlawfulness of such activities that are capable of significantly affecting the management of local life and resolution of local issues by the local government and thus prejudice the possibilities of the local government to perform its inherent duties, must be recognised (see also the Administrative Law Chamber of the Supreme Court judgment of 28 February 2007 I administrative case no. 3-3-1-86-06, paragraph 16). The Chamber is of the opinion that an order of the Government of the Republic granting its consent to the issuing of a permit for geological investigation for prospecting or an explorations permit or an extraction permit may well meet the requirements set out in the latter judgment.

34. Taking into account the above considerations the Chamber is of the opinion that the request of the Koigi rural municipality council to declare unconstitutional and to repeal the second sentence of § 20(3) and § 34(2) of the ECA is to be dismissed.

35. The Koigi rural municipality council applies, on the basis of § 63(1) of the CRCPA, for the compensation of its legal aid costs incurred by the submission of its request. As the request was not satisfied, the Chamber shall not satisfy the request for covering the legal aids costs, either.
