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JUDGMENT OF THE SUPREME COURT EN BANC

No. of the case 3-4-1-10-07

Date of judgment 13 April 2007

Composition of court Chairman Märt Rask, and members Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Lea Kivi, Indrek Koolmeister, Ants Kull, Lea Laarmaa, Julia Laffranque, Jaak Luik, Priit Pikamäe, Jüri Pöld, Harri Salmann and Tambet Tampuu.

Court Case Request of the Board of the Riigikogu for premature termination of the authority of the members of the Riigikogu Siiri Oviir, Katrin Saks and Andres Tarand.

Type of proceeding Written proceeding

DECISION **To satisfy the request of the Board of the Riigikogu and to terminate prematurely the authority of the members of the Riigikogu Siiri Oviir, Katrin Saks and Andres Tarand.**

FACTS AND COURSE OF PROCEEDING

1. By its resolution of 24 March 2007, entitled “Registration of members of the XI Riigikogu”, the National Electoral Committee registered Siiri Oviir, Katrin Saks and Andres Tarand as members of the Riigikogu. The authority of these members of the Riigikogu commenced on 27 March 2007.

2. On 26 March the members of the Riigikogu S. Oviir, K. Saks and A. Tarand filed applications with the Board of the Riigikogu. S. Oviir stated that as she continued to fulfil her function as a member of the European Parliament she declined the office of a member of the XI Riigikogu. K. Saks advised that she was declining the office of a member of the Riigikogu due to the fact that she was continuing her work in the European Parliament. A. Tarand declared that he was not intending to participate in the work of the XI Riigikogu, that he had publicly announced this even before the elections of 4 March 2007, and that he was not going to appear for the taking of the oath of office.

3. On 3 April 2007, pursuant to § 6 of the Riigikogu Internal Rules Act, the Board of the Riigikogu filed a request with the Supreme Court for termination of the authority of a member of the Riigikogu of S. Oviir, K. Saks and A. Tarand on the ground that the referred members of the Riigikogu refused to take the oath of office.

4. In their letters to the Supreme Court, dated 4 April 2007, the members of the Riigikogu S. Oviir, K. Saks and A. Tarand adhered to their applications submitted to the Board of the Riigikogu and the National Electoral Committee, pursuant to which they were not willing to become members of the Riigikogu and to take the oath of office, as they wished to continue their work in the European Parliament, and they requested that the Supreme Court swiftly adjudicate, in a written proceeding, the request of the Board of the Riigikogu for the termination of their authority as members of the Riigikogu.

OPINION OF THE SUPREME COURT EN BANC

5. Pursuant to § 61 of the Constitution the authority of the members of the Riigikogu shall commence on the day the results of the elections are announced. Before assuming his or her duties, a member of the Riigikogu shall take an oath of office to remain loyal to the Republic of Estonia and to its constitutional order.

S. Oviir, K. Saks and A. Tarand filed applications to the Supreme Court, stating that they were not willing to take the oath of office.

Pursuant to § 6(3) of the Riigikogu Internal Rules Act and to § 26(1) of the Constitutional Review Court Procedure Act, the authority of a member of the Riigikogu who refuses to take the oath of office may be terminated prematurely by a judgment of the Supreme Court, at the request of the Board of the Riigikogu. Thus, the refusal to take the oath of office constitutes a ground for premature termination of the authority of a member of the Riigikogu.

6. For this reason the Supreme Court satisfies the request of the Board of the Riigikogu and terminates prematurely the authority of Siiri Oviir, Katrin Saks and Andres Tarand as members of the Riigikogu.

Dissenting opinion of justice Eerik Kergandberg to the Supreme Court en banc judgment no 3-4-1-10-07

1. There is no doubt that the refusal of a member of the Riigikogu to take the oath of office gives the Supreme Court a legal basis under § 6(3) of the Riigikogu Internal Rules Act and § 26(1) of the Constitutional Review Court Procedure Act for premature termination of authority of respective member of the Riigikogu. Nevertheless, upon resolving a serious constitutional law problem it should not be too much for a constitutional court to ask whether there exists a constitutional basis for the discussed procedural act provided in the law.

2. According to § 64(2)4) of the Constitution the Supreme Court's competence to prematurely terminate the authority of a member of the Riigikogu is confined to the cases when a member of the Riigikogu is incapable of performing his or her duties for an extended period. There is no doubt that "incapable for an extended period" is a blank concept, yet to render it a content too broad would go counter to the spirit of the Constitution and could – in borderline cases – undermine the balance of the legislative and judicial powers.

3. Presuming, inter alia, that in the context of the Constitution terms should be used consistently, the incapability for an extended period should, for the purposes of § 64(2)4) of the Constitution, mean a situation which unexpectedly arises during the term of office (especially changes in the state of health) and which gives a ground for an objective valuer to raise the issue of whether a person who bears responsibility should carry on in his or her office, although he or she has not submitted a resignation. The resolution of issues of this kind should definitely be within the competence of the courts.

4. I am of the opinion that the wish of a person who has been elected a member of the Riigikogu to continue instead his or her work in the European Parliament could be regarded only as a resignation and not as incapability or incapability for an extended period for the purposes of § 64(2)4) of the Constitution. I find that the role of the judicial power and especially the role of the Supreme Court should be the resolution of serious legal conflicts that emerge in the society, and that it would amount to wasting state resources if this role were reduced to mere “stamping”.

**Dissenting opinion of justice Lea Kivi
to the Supreme Court en banc judgment no 3-4-1-10-07**

1. According to § 61 of the Constitution the authority of the members of the Riigikogu shall commence on the day the results of the elections are announced. On 24 March 2007 the National Electoral Committee registered Siiri Oviir, Karin Saks and Andres Tarand as the members of the XI Riigikogu. On 26 March 2007 the members of the Riigikogu Siiri Oviir, Katsin Saks and Andres Tarand submitted the following applications to the Board of the Riigikogu.

S. Oviir and K. Saks advised that they declined the office of a member of the XI Riigikogu because they were continuing their work in the European Parliament. A. Tarand advised that he was not intending to participate in the work of the XI Riigikogu, that he had publicly announced this even before the elections of 4 March 2007 and that he would not appear for the taking of the oath of office. The Board of the Riigikogu regarded all the referred applications as refusals of members of the Riigikogu to take the oath of office and on 3 April 2007, under § 6 of the Riigikogu Internal Rules Act, submitted a petition to the Supreme Court for the premature termination of authority of a member of the Riigikogu of S. Oviir, K. Saks and A. Tarand.

2. I am of the opinion that the competence of the Supreme Court established in § 6(3) of the Riigikogu Internal Rules Act and in § 26(1) of the Constitutional Review Court Procedure Act to prematurely terminate the authority of the member of the Riigikogu who refuses to take the oath of office is in conflict with § 64(2)4) of the Constitution.

According to this constitutional provision the competence of the Supreme Court to prematurely terminate the authority of members of the Riigikogu is confined to the cases when a member of the Riigikogu is incapable of performing his or her duties for an extended period. In the judgment of 6 February 2002 in case no 3-5-0-1-02 the Supreme Court took an unreasoned position that “the regulation of a situation, not regulated by the Constitution, in the Riigikogu Internal Rules Act is not in conflict with the spirit of the Constitution”. As it does not appear from the judgment why vesting additional authority in the Riigikogu by an Act was considered to be in conformity with the Constitution, it can be concluded that the refusal to take the oath of office was classified under the incapability of a member of the Riigikogu to perform his or her duties for an extended period, referred to in § 64(2)4) of the Constitution. I agree with the opinion expressed by Eerik Kergandberg in his dissenting opinion that “incapable for an extended period” is a blank concept, yet to render it a content too broad would go counter to the spirit of the Constitution. When terminating the authority of a member of the Riigikogu prematurely the Supreme Court checks and evaluates evidence and considers whether the person who is not resigning from the Riigikogu on his or her own initiative manages to perform his or her duties or is incapable of doing so for an extended period. In this respect the Supreme Court is obliged to protect members of the Riigikogu against unjustified termination of their authority.

3. In the present case there was no legal dispute whatsoever. In their applications to the Board of the Riigikogu as well as in the additional applications to the Supreme Court the members of the Riigikogu S. Oviir, K. Saks and A. Tarand stated that they wanted to continue working in the European Parliament. Therefore, in essence, this amounts to their leaving the Riigikogu on their own initiative i.e. the resignation, and according to § 8 of the Riigikogu Internal Rules Act, in such a case the authority of a member of the Riigikogu terminates on the day on which the Board of the Riigikogu decides on assumption of membership

in the Riigikogu by an alternate member.

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