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## Constitutional judgment 3-4-1-17-02

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

<b>No. of the case</b>	3-4-1-17-02
<b>Date of decision</b>	13 November 2002
<b>Composition of court</b>	Chairman Tõnu Anton, members Ants Kull and Jüri Pöld
<b>Court case</b>	Complaint of the election coalition "Kodukotus" requesting the annulment of voting results of the Mikitamäe rural municipality council elections
<b>Basis of the proceeding</b>	Complaint of the election coalition "Kodukotus"
<b>Type of proceeding</b>	Written proceeding
<b>Decision</b>	<b>To dismiss the complaint of the election coalition "Kodukotus"</b>

#### FACTS AND COURSE OF PROCEEDING

1. On 23 October 2002 Johannes Raidla, the authorised representative of the election coalition "Kodukotus", submitted a complaint to the Põlva County Electoral Committee, asking it to assess the legality of the Mikitamäe rural municipality council elections. As it appears from decision no. 2 of the county electoral committee, the complainant alleged the following:

1) Candidates of the Estonian Centre Party T. Paap, F. Raudkett, S. Nurmeots and I. Palmik have given vodka and money and have promised money and a bicycle to V. Karpson, H. Midro, L. Lillestik, L. Ämarik, K. Ivaste and A. Kerov if they vote for them. Also, deceit and threats were used.

2) The signatures of M. Päiv and E. Visnak in the list of home voters are not autographic.

2. By its decision of 25 October 2002 the Põlva County Electoral Committee dismissed the complaint in regard to falsification of signatures of M. Päiv and E. Visnak, as the fact was not established. The county electoral committee found that the explanations of the deputy head of the Mikitamäe rural municipality division committee H. Laar and member of the committee H. Reidla prove that M. Päiv and E. Visnak were assisted by a worker of a general care home in the performance of election activities. The county electoral committee found, upon visual inspection, that signatures were written in an old person's handwriting and that they were not written by the same person. The county electoral committee found also that the Põlva Police Prefecture is competent to form an opinion on bribery of electorate with money and alcohol, as the electoral committee can not carry out investigative actions in regard to the activities of candidates of the Estonian Centre Party T. Paap, F. Raudkett, S. Nurmeots and I. Palmik. That is why the committee transferred the complaint in regard to bribery of electorate by the referred persons to the Põlva Police Prefecture for forming an opinion whether the activities of the referred persons contain necessary elements of § 164 of the Penal Code.

3. On 28 October 2002 J. Raidla submitted a complaint to the National Electoral Committee, requesting the annulment of election results in the Mikitamäe rural municipality, the conduct of expert assessment of the signatures of M. Päiv and E. Visnak and the assessment of the state of health of these persons, and ascertainment of the will and capability of M. Päiv and E. Visnak to participate in the local government council elections. The complainant states that he is not satisfied with the decision of the county electoral committee for the following reasons:

1. "They trust the explanations of the members of the Mikitamäe rural municipality division electoral committee without expert assessment of signatures."

2. "According to our visual inspection the signatures of Maria Päiv and Endla Visnak are not autographic. You can write anything with a hand of an incapacitated person."

4. By its decision no. 40 of 30 October 2002 the National Electoral Committee dismissed the complaint of the authorised representative of the electoral coalition "Kodukotus". The National Electoral Committee gave the following reasons for the dismissal of the complaint:

1) Pursuant to § 52(4) of the Local Government Council Election Act an elector who votes at home shall sign the list of electors voting at home against the receipt of a ballot paper. It appears from decision no. 2 of the Põlva County Electoral Committee of 25 October 2002 and from the explanatory letter of the deputy head of the division committee H. Laar and member of the committee H. Reidla, appended to the decision, that a worker of Mikitamäe rural municipality general care home assisted the welfare recipients. Assisting an elector is in itself not in conflict with the Local Government Council Election Act. The complaints submitted to the county electoral committee and the National Electoral Committee do not explain the grounds on which the complainant finds that the signatures were not autographic. That is why the request of the complainant for expert assessment of the signatures is not justified.

2) The complainant wishes that the health condition, and the will and capability of M. Päiv and E. Visnak to participate in the elections of local government council be ascertained. Pursuant to § 5(3) of the LGCEA any person, if he or she has not been divested of his or her active legal capacity by a court, has the right to vote. As the decision concerning active legal capacity for the purposes of § 5(3) of the LGCEA is made by a court, the referred issue is outside the competence of the National Electoral Committee.

5. On 4 November 2002 the election coalition "Kodukotus" submitted a complaint to the Supreme Court, requesting the annulment of the Mikitamäe rural municipality council election results. The Supreme Court received the complaint on 8 November 2002.

## **JUSTIFICATIONS OF PARTICIPANTS IN THE SUPREME COURT**

6. The Election Coalition "Kodukotus" states the following in its complaint:

- 1) The committees believed the explanations of members of the division committee without expert assessment of handwriting.
- 2) According to the complainant the signatures of M. Päiv and E. Visnak are falsified.
- 3) The need of assistance of incapacitated persons has been taken advantage of.
- 4) According to the complainant the electoral activities were assisted by A. Karja, who bribed the electorate in favour of the Centre Party with alcohol.

**7.** The National Electoral Committee states in its explanations given to the Supreme Court concerning the complaint that the complaint is without basis, because the complainant has not explained in the complaints submitted to the county electoral committee, to National Electoral Committee and to the Supreme Court, what is the data on the basis of which he argues that the disputed signatures in the list of home voters are falsified. The allegations of bribery of electorate, referred to in the complaint, were not stated in the complaint submitted to the National Electoral Committee.

### **OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER**

**8.** The complaint of the electoral coalition "Kodukotus" contains a request to annul the election results in the Mikitamäe rural municipality. Pursuant to § 56(2) of the Constitutional Review Court Procedure Act the Supreme Court can annul voting results, if violation of law affected or could have affected the voting results significantly. Irrespective of the inaccuracy of the wording the Supreme Court understands the actual will of the complainant - to achieve the annulment of the voting results of the Mikitamäe rural municipality council elections.

**9.** The Chamber examines only those allegations in the complaint of the complainant, which were also submitted to the county electoral committee and to the National Electoral Committee. Such allegation is the following: the signatures of M. Päiv and E. Visnak in the list of home voters are not autographic.

**10.** The Chamber agrees with the opinion of the National Electoral Committee that in the complaints submitted to the county electoral committee and to the National Electoral Committee, the basis on which the complainant argues that the signatures in the list of home voters are not autographic, have not been justified, and thus, the request to conduct expert assessment of signatures is not justified, either. In the complaint submitted to the Supreme Court it has not been explained, either, on the grounds of which data the allegation that signatures of M. Päiv and E. Visnak in the list of home voters are falsified is based.

**11.** The complaint of the electoral coalition "Kodukotus" is dismissed.

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