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JUDGMENT OF THE CONSTITUTIONAL REVIEW CHAMBER OF THE SUPREME COURT

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| No. of the case | 3-4-1-15-02 |
| Date of decision | 8 November 2002 |
| Composition of court | Chairman Tõnu Anton, members Eerik Kergandberg and Jüri Pöld |
| Court case | Complaint of the Union For The Republic - Res Publica requesting the annulment of voting results of the Puurmani rural municipality council elections |
| Basis of the proceeding | Complaint of the Union For The Republic - Res Publica |
| Type of proceeding | Written proceeding |
| Resolution | To dismiss the complaint of the Union For The Republic - Res Publica |

PARTICIPANTS AND COURSE OF PROCEEDING

1. On 22 October Väino Tuhkanen, the authorised representative of the Union For The Republic - Res Publica in the Puurmani rural municipality, filed a complaint with the Jõgeva County Electoral Committee, requesting that it check the conformity of the Puurmani rural municipality council elections of 20 October 2002 to the Local Government Council Election Act (hereinafter "the LGCEA"), and that it annul the voting results in the Puurmani rural municipality. According to the complaint the number of persons who voted at home was inscrutably big, making up 10% of the voters in the Puurmani rural municipality on a whole and 17% in the Saduküla region. The complainant requested that it be controlled whether this could be attributed to organised home voting. Observer Terje Luige confirmed that several young families of Saduküla voted at home. Observer Jane Toots confirmed that A. Koll and his wife, who could have voted in the polling division, voted at home. In addition, two more families with capacity for work living in Pikknurme voted at home. According to the complainant the applications had been previously typed and photocopied. The

complainant found that as far as he knows it were the candidates for the Estonian People's Union who collected applications for home voting, this amounts to misdemeanour of the candidate of Estonian People's Union, and requires independent investigation.

2. The Jõgeva County Electoral Committee dismissed the complaint of Väino Tuhkanen by its decision no. 2 of 25 October 2002. The county electoral committee found that in the Puurmani rural municipality 80 of voters of 954 (8.4%) voted at home, whereas in electoral district no. 1 the persons who voted at home made up 5.9% of the total number of voters, and in electoral district no. 2 the figure was 15.1%. Upon checking the lists of home voters it became apparent that none of the young families living in Saduküla had voted at home. A. Koll and his wife did not vote at home, instead they voted at the polling division during advance polling on 16 October. According to the written explanation of Vahur Ivask, head of the district committee of the electoral district no. 1, the committee also registered the applications to vote at home of young voters, because the committee lacked information concerning the state of health or other good reasons of the voters. According to the written explanation of Ester Kalm, the head of the electoral committee of the electoral district no. 2, the majority of persons who wished to vote at home were old people. Some of the applications were drawn in free from, some were typed. In the majority of cases the applications did not indicate the reason why people wanted to vote at home. The county electoral committee found that neither the Election Act nor Regulation no. 1 of the National Electoral Committee establish the list of good reasons, in the case of which an elector may apply to vote at home. Neither do the referred legal acts empower the district committee to deny applications to vote at home. No complaints have been filed concerning the procedural aspect of home voting and home voting does not affect election results.

3. On 26 October Väino Tuhkanen, the authorised representative of the Union For The Republic - Res Publica in the Puurmani rural municipality, filed a complaint with the National Electoral Committee. The complainant requested the annulment of voting results of the Puurmani rural municipality council elections of 20 October 2002, and holding of repeat voting.

4. The National Electoral Committee dismissed the complaint. The Committee gave the following reasons for the dismissal the complaint:

1) The complaint filed with the National Electoral Committee disputes a number of activities of district committees and other circumstances, which have not been described in the complaint submitted to the county electoral committee. The National Electoral Committee can hear a complaint only regarding the issues which have been indicated in the complaint submitted to the county electoral committee.

2) Pursuant to § 52(1) of the LGCEA, an elector may apply to vote at his or her home if he or she is unable to vote in the polling place due to his or her state of health or for another good reason. Pursuant to § 52(2), in order to hold home voting, an elector shall submit a written application. The county electoral committee has correctly found that as the Act does not establish a list of good reasons, the Act does not require that the reasons to vote at home must be indicated in the application, and the Act does not give a district committee the right to deny an application, the applications corresponding to the requirements of the Act must be accepted and home voting must be arranged for the persons who submitted applications. As the Act does not set requirements as to the application, a district electoral committee must, if in doubt, give priority to ensuring the elector's right to vote. A district committee is not competent to assess whether the reason for voting at home is a good one. Neither is the age of an elector a criterion for deciding on organising home voting.

3) Pursuant to § 52(2) of the LGCEA an application to vote at home must be in writing. It does not follow from this that an application has to be hand-written. A typed application is also acceptable on the condition that it bears the elector's signature. Neither is it illegal if a district committee prepares a typed form of application to vote at home.

5. On 5 November 2002 Väino Tuhkanen, the authorised representative of the Union For The Republic - Res Publica in the Puurmani rural municipality, filed a complaint with the Supreme Court, requesting that it

declare the voting results of the Puurmani rural municipality council elections invalid.

JUSTIFICATIONS OF PARTICIPANTS IN THE SUPREME COURT

6. The complaint contains the following arguments:

1) The head of the Saduküla division committee, in co-operation with the Estonian People's Union, organised the dissemination of applications to vote at home, thus violating the impartiality of the division committee and the competence of division committees under §§ 14(10) and 22 of the LGCEA.

2) Home voting is held pursuant to the list made up of applications submitted by 4 p.m. on election day (§ 52(2) of the LGCEA). It appears from the explanations of L. Vaiknemets, an observer of the Saduküla election committee, that one elector submitted the application to the electoral committee at 7 p.m., four home voters signed the application forms, given to them by the members of division committee, at the demand of the latter, during home voting after 4 p.m..

3) Observers L. Vaiknemets and T. Luik confirm that in Saduküla several young people voted at home. It appears from the list of home voters that the applications were submitted by older persons. The complainant has the doubt that this amounted to deceit and voting for somebody else. Member of the Puurmani division committee R. Vahtrik and observer J. Toots confirm that S. Koorts had voted for H. Kangro, who had submitted an application to vote at home and who did not ask S. Koorts to vote for her, and according to the observer's assessment the elector was capable of voting herself.

4) In the Puurmani region the candidates of the Estonian People's Union were active in drawing up applications to vote at home. The majority of applications are on uniform forms, not indicating the reasons for home voting.

5) In the Saduküla polling division voted a person divested of active legal capacity; this violated § 30(2) of LGCEA.

6) A. Laumets, who had been nominated a member of the Saduküla division committee by the Union For The Republic - Res Publica, could not participate in the work of the committee, because the rural municipality government did not provide transportation to her (§ 21(4) of the LGCEA).

7) The complainant does not understand why, during preliminary voting in the Puurmani division, a poor quality ballot box was used every day (§ 42(1) LGCEA).

8) R. Lust could not participate in the elections and could not vote, because he could not enter the polling place in his wheelchair. The head of the committee refused to write an application to vote at home for R. Lust. The best solution would have been if the head of the committee, a member of the committee and R. Lust's mother had helped R. Lust up the stairs to the polling place.

9) The elections in the Puurmani rural municipality were very even – the Estonian Centre Party received the support of 190 electors and 2 mandates, the Union For The Republic - Res Publica received the support of 191 electors and 3 mandates. The Union Pro Patria was short of a mandate by 4 votes.

7. In its explanations submitted to the Supreme Court the National Electoral Committee does not agree with the complaint, sticks to its decision no. 39 of 30 October 2002, and in addition gives further explanations.

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

8. The National Electoral Committee points out in its decision that in his complaint V. Tuhkanen has disputed a number of activities of the division committee and other circumstances, which have not been described in the complaint submitted to the county electoral committee. The National Electoral Committee could hear a complaint only regarding the issues which had been indicated in the complaint submitted to the

county electoral committee. The Chamber agrees with this opinion.

In his complaint to the Supreme Court V. Tuhkanen has also presented claims and justifications, which he did not present to the county electoral committee and to the National Electoral Committee. The Chamber shall adjudicate the complaint only in regard to those issues, which were under dispute in the county electoral committee as well as in the National Electoral Committee. As it appears from the materials of the case, such issues under dispute are preliminary preparation of typed forms of application to vote at home and the fact that young electors voted at home.

9. The Chamber agrees with the allegation of the complainant that the voting results in the Puurmani rural municipality were very even. In such a situation the violations of the Election Act can significantly affect the voting results.

10. Pursuant to § 52(2) of the Local Government Council Election Act an application to vote at home must be in writing. The Chamber agrees with the opinion of the National Electoral Committee that this provision does not give rise to the conclusion that the referred applications must be hand-written. A typed application is also acceptable, yet the signature of the elector is required. Neither is it illegal if the division committee prepares a typed form of application to vote at home.

11. Pursuant to § 52(1) of the Local Government Council Election Act an elector may apply to vote at his or her home if he or she is unable to vote in the polling place due to his or her state of health or for some other good reason. In order to hold home voting an elector shall submit a written application (§ 52(1) of the LGCEA).

When interpreting these provisions the county electoral committee and the National Electoral Committee came to the conclusion that applications to hold home voting, which fulfil legal requirements, should be accepted, and if an application is in conformity with the requirements, home voting should be held in any event. The electoral committees justified this view by the fact that the law does not establish a list of good reasons and does not require that the application indicate the reason for home voting; neither does the Act empower a division committee to deny applications. It was also argued that a division committee was not competent to assess whether the reason for home voting was a good one.

The Chamber does not agree with this opinion of the electoral committees. Pursuant to § 52(1) of the Local Government Council Election Act home voting is directly conditioned by good reasons. It is a matter of course that if an Act makes home voting directly conditional upon good reasons, then in order to use the possibility one has to indicate the reason for home voting in his or her application. The state of health as well as ‘another good reason’, referred to in the provision, are both blank concepts. A division electoral committee is competent to decide whether the reason indicated in the application is a good one, and to decide - after consideration - whether to hold home voting or not.

The Chamber agrees with the opinion of the National Electoral Committee that the age of an elector in itself is no criterion for deciding on holding home voting.

12. The Chamber points out that even if such voters who have no good reason are allowed to vote at home, home voting in itself can not be a reason for annulment of voting results.

13. The complaint of V. Tuhkanen, the representative of the Union For The Republic - Res Publica in the Puurmani rural municipality, is dismissed.