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Home > Constitutional judgment 3-4-1-14-02

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## Constitutional judgment 3-4-1-14-02

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

<b>No. of the case</b>	3-4-1-14-02
<b>Date of decision</b>	4 November 2002
<b>Composition of court</b>	Chairman Eerik Kergandberg, members Jüri Põld and Villu Kõve
<b>Court case</b>	Complaint of the Union For The Republic - Res Publica against the National Electoral Committee decision no. 35 of 22 October 2002.
<b>Disputed legislation</b>	The National Electoral Committee decision no. 35 of 22 October 2002.
<b>Basis of the proceeding</b>	Complaint of the Union For The Republic - Res Publica
<b>Type of proceeding</b>	Written proceeding
<b>Decision</b>	<b>To dismiss the complaint of the Union For The Republic - Res Publica</b>

#### FACTS AND COURSE OF PROCEEDING

1. The Saue rural municipality electoral committee registered Niina Andrejeva (under no. 144 in the list of the Estonian Centre Party), who is an alien residing in Estonia on the basis of a permanent residence permit, as a candidate for the Saue rural municipality council. She was not considered elected, but collected 30 votes, which is 9 votes less than the candidate who was elected to the council in the list of the Estonian Centre Party.

2. The fact that Niina Andrejeva has no right to run as a candidate became apparent after the announcement of the election results on 21 October 2002, when Niina Andrejeva was appointed the second alternate

member of the Estonian Centre Party.

3. On 22 October the National Electoral Committee made a decision ascertaining that ten stateless persons had participated in the elections to local government councils. Exercising supervision over the organisation of elections the National Electoral Committee found out that none of the ten candidates was considered elected. In nine cases out of ten the referred violation of law did not significantly affect the voting results. In the Vinni rural municipality, where the violation of law could have affected voting results, the results were annulled and new elections were called. At the same time the National Electoral Committee issued a precept not to register these candidates as alternate members of local councils. One of the cases ascertained by the National Electoral Committee was the case of Niina Andrejeva in the Saue rural municipality.

4. The Union For The Republic - Res Publica filed a complaint with the Supreme Court, requesting the annulment of the decision of the National Electoral Committee not to annul the voting results of elections to the Saue rural municipality council, the annulment of voting results in electoral district no. 1 of the Saue rural municipality, and obligating the National Electoral Committee to fix the date of repeat vote in the Saue rural municipality electoral district no. 1.

5. The Constitutional Review Chamber asked the Union For The Republic - Res Publica to specify the authorisation document of the representative of the Union. The Chamber received the new authorisation document on 31 October 2002.

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

6. The complainant maintains that the National Electoral Committee has not explained the grounds of its assertion that the illegal running as a candidate of N. Andrejeva did not affect the voting results in the Saue rural municipality. To ground the statement the complainant compared the number of votes given to the person who had no right to run as a candidate in the Vinni rural municipality with the number of votes given to the person with no right to run as a candidate in the Saue rural municipality, and found that both candidates received 1.02% of the votes.

7. The National Electoral Committee did not agree with the filed complaint and explained its principles for assessing violations. The National Electoral Committee considered the following criteria upon assessing violations:

- 1) was the candidate, who had no right to run as a candidate, considered elected;
- 2) did the number of votes received affect the distribution of mandates in the electoral district.

Implementation of d'Hondt comparative figures shows that the Estonian Centre Party would have got the same number of mandates as it got with the votes for N. Andrejeva even without the votes given to N. Andrejeva. Thus, the number of votes given to N. Andrejeva did not affect the distribution of mandates in the Saue rural municipality electoral district no. 1.

The National Electoral Committee found that the voting results of each rural municipality or city have to be assessed differently. Pursuant to the Election Act the list mandates are not distributed on the basis of the percentage of votes given, but proceeding from the comparative figures calculated for each political party. Depending on the distribution of votes between political parties and election coalitions, the same number of votes may result in annulment of election results in one rural municipality and not in some other rural municipality.

8. § 17(1) of the Local Government Council Election Act (hereinafter "the LGCEA") makes it a duty of the National Electoral Committee to exercise supervision over the activities of other electoral committees. In the present case the National Electoral Committee performed precisely this duty. Having obtained the information that N. Andrejeva, who had been presented as a candidate for the Saue rural municipality council in the list of the Estonian Centre Party and had received 30 votes at the elections, was not an

Estonian citizen and therefore could not run as a candidate under § 5(5) of the LGCEA, the Committee checked this information. As the information corresponded to the realities, the National Electoral Committee, in clause 2 of its decision no. 35 of 22 October 2002, on the basis of § 17(2) of the LGCEA, issued a precept to the Saue rural municipality electoral committee not to register N. Andrejeva as an alternate member of the rural municipality council. In clause 1 of the same decision the National Electoral Committee ascertained that the fact that N. Andrejeva ran as a candidate did not significantly affect the voting results in Saue rural municipality.

**9.** The Union For The Republic - Res Publica did not agree with the opinion of the National Electoral Committee that the fact that N. Andrejeva ran as a candidate did not significantly affect the voting results in the Saue rural municipality and therefore asks the Supreme Court to annul the referred decision of the National Electoral Committee to the extent that it did not annul the voting results in the Saue rural municipality. Also, the Union requests the Supreme Court that it annul the voting results in electoral district no. 1 of the Saue rural municipality, and obligate the National Electoral Committee to fix the time of repeat voting.

**10.** The Chamber is of the opinion that the decision of the National Electoral Committee, by which a precept was issued to the rural municipality electoral committee not to register the candidate who did not fulfil the requirements of the Election Act, and by which it was ascertained that the running as candidates of the persons who had no right to run as candidates did not significantly affect the voting results in the electoral district, is capable of violating the rights of a competing political party.

**11.** The National Electoral Committee has not, in the disputed decision, indicated the reasoning resulting in the conclusion that the fact that N. Andrejeva ran as a candidate in electoral district no. 1 of the Saue rural municipality did not significantly affect the voting results in the electoral district. The National Electoral Committee has submitted this reasoning to the Supreme Court on the basis of § 38(2) of the Constitutional Review Court Procedure Act, together with its written explanations concerning the complaint. Thus, the disputed decision of the National Electoral Committee is reviewable.

**12.** Pursuant to § 56(2) of the Local Government Council Election Act a candidate in favour of whom the number of votes cast exceeds or equals the simple quota shall be elected. N. Andrejeva, who ran as a candidate in the list of the Estonian Centre Party was not considered elected pursuant to this provision because the 30 votes given to her were less than the simple quota. Mandates which are not distributed in the electoral district on the basis of a simple quota shall be distributed, pursuant to § 56(3) of the LGCEA, as list mandates between political parties and election coalitions. "In order to distribute list mandates, the candidates shall be ranked in the lists according to the number of votes received. If at least two candidates receive an equal number of votes, the candidate who was positioned toward the top of the list of candidates shall be positioned ahead. The votes of candidates running in the list of the same party or election coalition shall be totalled" (§ 56(4) of the LGCEA). Distribution of list mandates is also regulated by subsection (5) of the same section, which establishes: "A modified d'Hondt distribution method with the distribution series of 1, 2<sup>0.9</sup>, 3<sup>0.9</sup>, 4<sup>0.9</sup>, etc. shall be used in the distribution of list mandates. In calculating the comparative figure of each political party or election coalition, as many first elements of the series shall be omitted as the number of mandates distributed to the party or election coalition in the corresponding electoral district on the basis of the simple quota. If the comparative figures of at least two political parties or election coalitions are equal, the mandate shall be given to the political party or election coalition whose candidates were registered earlier."

**13.** The Chamber agrees with the opinion of the National Electoral Committee that the votes given to N. Andrejeva did not significantly affect the voting results in the electoral district, and agrees also with the reasoning of the National Electoral Committee.

N. Andrejeva received 30 votes, and the list of the Estonian Centre Party, in which N. Andrejeva ran as a candidate, received the total of 776 votes. The Estonian Centre Party received 5 mandates and the fifth mandate was given to the party on the basis of the comparative figure 182.3009. N. Andrejeva was not

considered elected on the basis of the simple quota. Without the votes given to N. Andrejeva the number of votes given to the Estonian Centre Party would have been 746. The comparative figure in case of such number of votes would have been 175.25317. The comparative figures of candidates of other political parties who were not considered elected were 175.1068, 158.6200 and 169.0000. Thus, the comparative figure of the Estonian Centre Party is the biggest even when the votes given to N. Andrejeva are not taken into account.

**14.** The fact that both in the Saue and the Vinni rural municipalities 1.02% of votes were given to persons who had no right to run as candidates, and that it was ascertained that in the Vinni rural municipality that the participation of the person who had no right to run as a candidate affected the voting results significantly, does not mean that also in the Saue rural municipality the participation of a person with no right to run as a candidate affected the voting results significantly. What is important is the comparative figure, which depends on the number of candidates and lists, and on the valid votes received.

15. For the above reasons the complaint of the Union For The Republic - Res Publica is dismissed.

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