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## Constitutional judgment 3-4-1-13-02

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

<b>No. of the case</b>	3-4-1-13-02
<b>Date of decision</b>	1 October 2002
<b>Composition of court</b>	Chairman Lea Kivi, members Ants Kull and Jüri Pöld.
<b>Court case</b>	Complaint of Sergei Ivanov requesting the partial annulment of the Tallinn Electoral Committee decision no. 16 of 15 September 2002.
<b>Disputed legislation</b>	The National Electoral Committee decision no. 29 of 18 September 2002.
<b>Basis of the proceeding</b>	Complaint of Sergei Ivanov
<b>Type of proceeding</b>	Written proceeding
<b>Decision</b>	<b>To dismiss the complaint of Sergei Ivanov</b>

### FACTS AND COURSE OF PROCEEDINGS

1. By decision no. 16 of 15 September 2002, the Tallinn Electoral Committee registered persons presented for registration, including candidates of the Russian-Baltic Party in Estonia (hereinafter “the RBPE”), and assigned registration numbers to them. Persons presented by Russian-Baltic Party in Estonia were assigned registration numbers 997 to 1028.

2. On 17 September S. Ivanov submitted a complaint with the National Electoral Committee, requesting that it annul the decision of the Tallinn Electoral Committee concerning registration of candidates. S. Ivanov argued that the list of candidates of the RBPE was presented by persons who had no legal right to represent

the political party. Pursuant to § 31(4) of the Local Government Council Election Act (hereinafter "the LGCEA") a political party shall, upon presenting candidates for registration, submit a written notice to the electoral committee, indicating the names, personal identification codes, addresses and telecommunications numbers of authorised representatives of the party. Pursuant to the same provision the notice shall be signed by a person who is entitled to represent the political party pursuant to the Non-profit Associations Act or the Statutes of the Party. Pursuant to clause 5.12 of the Statutes and on the basis of the valid entry in commercial register, the chairman (member of the board) S. Ivanov individually and/or other members of the board collectively are authorised to represent the BRPE. In his statement of claim filed with the Tallinn City Court on 21 June 2002, S. Ivanov disputed the resolutions of the second congress of the Russian-Baltic Party in Estonia of 15 June 2002, including the amendments to the Statutes and elections to the governing bodies of the political party. On the same day S. Ivanov submitted a petition to the Registry Department of the Tallinn City Court requesting it not to accept the petitions proceeding from the resolutions of the RBPE congress of 15 June 2002, until the matter is resolved by the court. The violation of law committed by the Tallinn Electoral Committee consists in the fact that by recognising the right of representation of the so called new board, without waiting for the results of judicial dispute concerning the fact, the Committee held that the registry entry concerning the member of the board of the RBPE was wrong, whereas the powers of the so called new board, elected at the congress of the political party on 15 June 2002, were correct.

3. By decision no. 29 of 18 September 2002 the National Electoral Committee dismissed the complaint of S. Ivanov. The National Electoral Committee argued that the entering into force of resolutions of general assembly concerning elections of the board of a political party does not depend on making an entry in the register. Nevertheless, it is required that the changes in the membership of board are entered in the commercial register card of a non-profit association or foundation. Pursuant to § 80(3) of the Non-profit Associations Act, if facts which must be entered in the register are not entered in the register, such facts shall have legal effect only if the third person knew or should have known about them. In the given case the Tallinn Electoral Committee was aware of changes in the board of the RBPE, and proceeding from this the Committee accepted the right of the new board to represent the political party. Suspension of making an entry in the registry by a court ruling does not indicate that the validity of resolutions of general assembly is suspended, too.

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

4. S. Ivanov filed a complaint with the Supreme Court against this decision, requesting that the decision of the National Electoral Committee be annulled and the National Electoral Committee be obliged to make a new decision, revoking decision no. 16 of the Tallinn Electoral Committee of 15 September concerning registration of candidates of the RBPE. S. Ivanov maintains that the National Electoral Committee treated the complaint signed by the legal representative of the RBPE (chairman of board S. Ivanov) wrongly as a complaint submitted by S. Ivanov as an individual. The National Electoral Committee has wrongly interpreted the Non-profit Associations Act. The National Electoral Committee has, exceeding its powers and without waiting for the results of the dispute concerning pertinent facts pending in the Tallinn City Court, taken a view, ignoring the provisions of § 80(2) of the Non-profit Associations Act, that the entry in the register of non-profit associations concerning the members of the board of the RBPE is not correct.

5. In its explanations submitted to the Supreme Court concerning the complaint of S. Ivanov the National Electoral Committee requests that the complaint of S. Ivanov be dismissed.

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

6. It appears from the materials of the case that in 2000 the first congress of the RBPE elected a board, to which S. Ivanov belonged as the chairman. The second congress of the political party of 15 June 2002 elected a new board, not including S. Ivanov. The new board was composed of the following members: V. Lanberg as the chairman and S. Tšerepanov, I. Budrik and A. Sorokolet as members. On 19 August 2002, pursuant to § 31(4) of the LGCEA, the member of the RBPE board S. Tšerepanov submitted to the Tallinn Electoral Committee a notice, signed by the new chairman of the RBPE V. Lanberg, concerning authorised

representatives of the political party. I. Budrik and S. Tšerepanov had been appointed the authorised representatives of the political party. On 21 August I. Budrik and S. Tšerepanov submitted the list of candidates of the RBPE for the elections to the Tallinn City Council, which the Tallinn Electoral Committee registered.

**7.** S. Ivanov maintains that I. Budrik and S. Tšerepanov were not authorised to present candidates for the election of the Tallinn City Council on behalf of the RBPE, because pursuant to clause 5.12 of the Statutes of the RBPE and entry in the register, V. Lanberg was not authorised to submit to the Tallinn Electoral Committee a notice concerning authorised representatives. In the opinion of S. Ivanov the National and the Tallinn Electoral Committee should have proceeded from the commercial register entry, pursuant to which S. Ivanov individually and other members of board collectively are authorised to represent the political party. The National Electoral Committee and the Tallinn Electoral Committee are of the opinion that they had to proceed from the resolution of the second congress of the RBPE in June, by which a new board was elected, and that pursuant to § 80(3) of the Non-profit Organisations Act the entry in the register is not important in the present case.

**8.** § 31(4) of the Local Government Council Election Act establishes: "Upon presenting candidates for registration, a political party shall submit to rural municipality or city committee a written notice, indicating the names, personal identification codes, addresses and telecommunications numbers of the authorised representatives of the political party. The notice shall be signed by the person who is entitled to represent the political party on the basis of the Non-profit Associations Act (RT I 1996, 42, 811; 1998, 96, 1515; 1999, 10, 155; 23, 355; 67, 658; 2000, 55, 365; 88, 576; 2001, 56, 336; 93, 565) or of the Statutes of the political party. If the party is not in the list referred to in subsection (2) of this section, the political party shall also submit a certificate to the effect that it has been entered into the register of non-profit associations and foundations."

Persons authorised to represent the Russian-Baltic Party in Estonia are established in clause 5.12 of the Statutes of the political party: "The chairman of the political party - chairman of board - shall represent the political party individually. Other members of the board may represent the political party collectively or in the composition of 7 members, if there are more than 8 members in the board."

The valid entry in the register indicates that member of board S. Ivanov represents the political party individually and other members of board collectively. This entry in the register reflects the membership of the board elected at the first congress of the RBPE. Making an entry in the register concerning the board elected at the second congress is suspended on the basis of the request of S. Ivanov.

**9.** The dispute is about whether the city electoral committee had to accept the representatives of the RBPE on the basis of register entry or the resolutions of the second congress of the RBPE.

**10.** § 80 "Legal effect of entry" of the Non-profit Associations Act establishes:

"(1) An entry in the register shall enter into force upon signature by the person enforcing the judgment on entry and by the person who is competent to make the judgment on entry.

(2) An entry shall be held as correct with regard to a third person, except if the third person knew or should have known that the entry is not correct. An entry shall be deemed not to apply with regard to legal acts which are performed within fifteen days after the entry is made if a third person proves that the third person was not aware nor should have been aware of the content of the entry.

(3) If facts which must be entered in the register are not entered in the register, such facts shall have legal effect with regard to a third person only if the third person knew or should have known about them.

(4) The facts contained in an entry made on the basis of a court judgment shall acquire legal effect as of the entry into force of the court judgment."

**11.** It proceeds from § 80 of the Non-profit Associations Act that entries in the register concerning members of board of non-profit associations do not have the effect of creating rights. The termination of powers of a member of board and the election of a new board shall take effect as of the moment when the decision is taken. Data in the registry is to be updated subsequently.

It appears from the materials of the case that the record of the proceedings at the second congress of the RBPE, indicating the election and composition of the new board, was submitted to the Tallinn Electoral Committee. Thus, the city committee was informed of the election of the new board. The city committee has, on the basis of § 80(3) of the Non-profit Associations Act, correctly accepted the right to represent the political party, proceeding from the resolution of the second congress of the RBPE. Also, the National Electoral Committee has correctly treated the complaint of S. Ivanov as the complaint of an individual.

That is why the Chamber dismisses the complaint of S. Ivanov.

**12.** The Chamber considers it necessary to point out that S. Ivanov disputed the decision of the National Electoral Committee, by which his complaint against the decision of the city electoral committee was resolved, and asked the Supreme Court to annul the decision of the National Electoral Committee and obligate the referred Committee to make a new decision, annulling the decision of the Tallinn Electoral Committee. The Chamber does not consider such a request to be correct, because in the present case the dispute is about the legality of the decision of the city electoral committee. The Chamber supports this view as follows.

**13.** § 66(1) of the Local Government Council Election Act establishes: "If an interested person finds that an act of a division committee, decision or act of a rural municipality or city electoral committee, decision or act of a county electoral committee, or decision or act of National Electoral Committee violates his or her rights, he or she is entitled to submit a complaint to the Supreme Court pursuant to procedure established in the Constitutional Review Court Procedure Act (RT I 2002, 29, 174)." Subsection (2) of the same section establishes: "A complaint against a decision or act of an electoral committee may be submitted to the Supreme Court after the resolution of the matter by National Electoral Committee. The complaint shall be submitted to the Supreme Court through the National Electoral Committee within three days after the communication of the decision of the National Electoral Committee or performance of the act."

**14.** Pursuant to § 37(1) of the Constitutional Review Court Procedure Act a political party, election coalition or a person who finds that his or her rights have been violated by a decision or act of an electoral committee, may submit a complaint to the Supreme Court requesting that the decision of an electoral committee be annulled or an act of an electoral committee be declared unlawful, and voting results in a polling division, electoral district, rural municipality, city, county or state be declared invalid. § 38(1) of the same Act establishes: "A complaint against a decision or act of an electoral committee may be submitted to the Supreme Court after the resolution of the matter by National Electoral Committee. The complaint shall be submitted to the Supreme Court through the National Electoral Committee within three days after the communication of the decision of the National Electoral Committee or performance of the act." Pursuant to subsection (2) of § 38 the National Electoral Committee shall refer the complaint to the Supreme Court together with written explanations on the following working day at the latest. § 46(1) 1) gives the Supreme Court the right to annul the decision of an electoral committee, declare an act of the electoral committee unlawful and obligate the electoral committee to make a new decision or perform a new act.

**15.** Pursuant to these provisions it is possible to dispute in the Supreme Court any decision or act of an electoral committee which is claimed to violate the rights of a person. Only those decisions of an electoral committee can be annulled and acts of an electoral committee can be declared unlawful, which violate the rights of a person.

The Chamber is of the opinion that in the present case, on the basis of § 37(1) and 38(1), it would have been correct to dispute in the Supreme Court not the decision of the National Electoral Committee - a body

resolving a pre-trial complaint - but the decision of the Tallinn Electoral Committee.

**16.** As it is only since 1 July of 2002 that electoral disputes are - for the first time - subjected to the Supreme Court as the only judicial body for resolution of electoral disputes, and the Chamber understands the wish of S. Ivanov to obtain the partial annulment of the decision of the Tallinn Electoral Committee, the Chamber considers the complaint admissible irrespective of the deficiencies thereof.

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