Constitutional judgment 3-4-1-11-16

S U P R E M E C O U R T

CONSTITUTIONAL REVIEW CHAMBER

JUDGMENT

in the name of the Republic of Estonia

Case number	3-4-1-11-16
Date of judgment	16 May 2017
Composition of court	Chairman: Priit Pikamäe; members: Hannes Kiris, Saale Laos, Viive Ligi and Tambet Tampuu
Case	Review of constitutionality of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act
Basis for proceedings	Application of 8 November 2016 by Kose Rural Municipal Council, application of 21 November 2016 by Lääne-Saare Rural Municipal Council, application of 3 January 2017 by Kõpu Rural Municipal Council, and application of 28 December 2016 by Vormsi Rural Municipal Council
Hearing	Written procedure

OPERATIVE PART

To dismiss the applications by Kose Rural Municipal Council, Lääne-Saare Rural Municipal Council, Kõpu Rural Municipal Council, and Vormsi Rural Municipal Council.

FACTS AND COURSE OF PROCEEDINGS

1. On 7 June 2016, the Riigikogu passed the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act, entering into force on 16 October 2017 as laid down in § 3 of the Act.

2. On 8 November 2016, Kose Rural Municipal Council lodged an application with the Supreme Court to initiate constitutional review proceedings in respect of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act. **[not translated]**.

3. On 21 November 2016, Lääne-Saare Rural Municipal Council lodged an application with the Supreme Court seeking a declaration of unconstitutionality of § 1 and § 2 cl. 3) of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act. **[not translated]**.

4. [not translated].

5. On 3 January 2017, Kõpu Rural Municipal Council lodged an application with the Supreme Court seeking a declaration of unconstitutionality of § 1 and § 2 cl. 3) of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act. **[not translated]**.

6. [not translated].

7. On 28 December 2016, Vormsi Rural Municipality Government by proxy of Vormsi Rural Municipal Council lodged an application with the Supreme Court seeking a declaration of unconstitutionality of § 1 and § 2 cl. 3) of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act. **[not translated]**.

8. [not translated].

[The Supreme Court joined all the applications in unified proceedings]

APPLICATIONS BY KOSE RURAL MUNICIPAL COUNCIL, LÄÄNE-SAARE RURAL MUNICIPAL COUNCIL, KÕPU RURAL MUNICIPAL COUNCIL, AND VORMSI RURAL MUNICIPAL COUNCIL

9. The applicants have pleaded unconstitutionality of the contested provisions with the local authority right of self-organisation deriving from § 154(1) of the Constitution, and essentially also the principle of separation and balance of powers under § 4 of the Constitution, and the principle of incompatibility of the office of member of the Riigikogu with other state office under § 63(1) of the Constitution.

10. A legal act that allows a member of the Riigikogu to participate in the work of a local government representative body negatively affects independent decision-making concerning local issues, which is the essence of the local authority right of self-organisation. Members of the Riigikogu might not proceed from the interests of the local community in decision-making. The interference is also intensified by the fact that the number of local authorities and the number of municipal council members decreases as a result of the administrative reform, so that a situation where in the future the majority in several municipal councils could be made up of Riigikogu members cannot be ruled out.

11. Upon entry into force of the Act, the working time of municipal councils needs to be rearranged, so as to enable members of the Riigikogu also to participate in the work. This constitutes interference with the local authority right of self-organisation and may also be contrary to Article 7 para. 1 of the European Charter of Local Self-Government, which stipulates that the conditions of office of local elected representatives must provide for free exercise of their functions. It is difficult for a member of the Riigikogu who holds the mandate of a municipal council member to participate in the work of the municipal council, which thus

interferes with local authority autonomy.

12. Combining the mandates causes a conflict of interests for a member of the Riigikogu as the interests of the local authority and the state contradict each other, as do the functions of executive and legislative power.

13. The interests of the state and of a local authority may clash and in case of necessity a local authority must be able to stand in opposition to state interests. For example, a clear conflict between state and local authority interests may arise with regard to issues of financing local authorities.

14. Under the Local Government Organisation Act (LGOA), municipal council members must act in accordance with the law, rural municipality or city legislation and the needs and interests of the residents of the rural municipality or city. Section 62 of the Constitution stipulates the principle of a free mandate, under which members of the Riigikogu represent not only the interests of their voters or their constituency in the Riigikogu but exercise state authority as representatives of the whole nation. The necessity to take decisions in the Riigikogu in the interests of the whole nation and in a municipal council only in the interests of local authority inhabitants causes a conflict of interests for a person who simultaneously belongs to both representative bodies.

15. When discharging state-level functions imposed on it, a local authority acts as part of the executive state authority. Thus, a member of the Riigikogu who simultaneously belongs to a municipal council exercises legislative authority in one position and (at least partly) executive authority in the other position, which may also lead to a conflict of interests.

16. Combining the mandates may also decrease the stability of representative bodies because a change of a coalition in the Riigikogu may lead to changes in a local representative body and carry over political conflicts from the Riigikogu to local councils.

17. Examples given in the explanatory memorandum to the Draft Act (181 SE, XIII composition) about other countries where combining the mandates is allowed are irrelevant. Combining mandates is allowed in countries with bicameral parliaments. Countries have different constitutions and the admissibility of combining mandates in other countries cannot lead to the conclusion that this should also be allowed in Estonia.

18. The claim in the explanatory memorandum to the contested Draft Act that applying the Anti-corruption Act can reduce conflict of interests for persons holding simultaneously a mandate of a member of the Riigikogu and of a municipal council member is erroneous. The measures described are not sufficient to prevent a conflict of interests.

19. Interference with the local authority right of self-organisation as a result of combining the mandates is not proportionate. According to the explanatory memorandum and other materials relating to preparation of the Draft Act, the aim of the amendment is to strengthen the central power and control of political parties in local authorities, to increase the representativeness of municipal councils and to reduce voter deception with so-called decoy duck candidates so that members of the Riigikogu enjoying considerable popularity are represented in municipal councils. The aim of the Act is also to enable members of the Riigikogu to be informed of local issues.

20. The aim of strengthening the central power in local authorities might not be legitimate since this is contrary to the core of local government autonomy.

21. The aim of increasing the representativeness of municipal councils with the help of members of the Riigikogu as persons enjoying real support in a local community cannot be achieved through the contested Act because the opportunity for members of the Riigikogu to belong to municipal councils reduces the opportunity for candidates who come from the local community but are less well-known to be elected. Representativeness does not mean that persons who are well-known and with the broadest range of supporters should be represented in municipal councils but that candidates who emerge from the local

community should be represented in municipal councils. Thus, the measure chosen is not suitable for attaining this aim.

22. A Riigikogu member's knowledge about local life and its problems may increase if they are an active and conscientious municipal council member, but allowing simultaneous membership of both representative bodies is not a necessary measure for attaining this aim, because members of the Riigikogu are entitled to compensation for their work-related expenses and they have sufficient free time and opportunity to visit public municipal council meetings even without being members of municipal councils themselves.

23. Allowing the mandates to be combined in order to eliminate so-called decoy duck candidates from municipal council elections is not a necessary measure. Alternative measures exist that would be less intrusive on the local authority right of self-organisation. For example, a legal rule could be established that a new mandate acquired in an election abolishes the previous mandate.

24. Allowing both mandates simultaneously is also not a measure that would be proportional in the narrow sense for ensuring the representativeness of municipal councils, because this seriously impinges on the local authority right of self-organisation, which puts a stop to the emergence in politics of young people from the local community and favours members of the Riigikogu in comparison to local politicians, while at the same time it is not possible to point to an overwhelming public interest that would justify such interference.

25. In its supplementary opinion, in response to the opinions of other participants in the proceedings, Lääne-Saare Rural Municipal Council contended that the application was also admissible insofar as it pleaded incompatibility with § 4, § 63(1) and § 64 of the Constitution. Even though individually these norms cannot be seen as constitutional guarantees for local authorities, they are related to interference with their autonomy.

26. Lääne-Saare Rural Municipal Council does not agree with the opinion of the Chancellor of Justice that combining the mandates does not affect local authority independence in deciding local issues. The Supreme Court has previously unequivocally concluded that a member of the Riigikogu being simultaneously a member of a municipal council interferes with local government autonomy.

27. The principle of personal separation of powers arising from § 4 of the Constitution also protects local autonomy. The Constitution keeps central and local government consistently separate. Consequently, persons exercising powers of central government and local government must also be different.

28. It is not correct that conflict of interests in the work of members of the Riigikogu already arises from the fact that a member of the Riigikogu is also a local authority inhabitant. The LGOA does not impose on local authority inhabitants a duty to observe the needs and interests of the inhabitants of a rural municipality or city in their activities, while it does impose that duty on members of municipal councils.

29. Use of professional and procedural restrictions to avoid a conflict of interests is not sufficient. Laws must create preconditions that prevent a conflict of interests from even emerging and enable a municipal council member always to decide in the interests of the community in the event of a conflict between state and local interests. Creating a risk of conflict of interests by a law is unconstitutional.

30. Even though the Constitution does not explicitly prohibit a member of the Riigikogu from being a member of a municipal council, this does not lead to the conclusion that such membership would be constitutional. The Constitution also does not explicitly lay down incompatibility of several other offices, but this does not mean that those offices could be compatible. It is also not decisive that the prohibition on combining offices does not unequivocally follow from the materials of the Constitutional Assembly either.

31. The example given by the Chancellor of Justice concerning the admissibility of combining mandates in Finland is not relevant either, because in that country the positions of member of parliament and minister, for instance, can also be combined.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

Riigikogu

32. The Riigikogu Constitutional Committee, which expressed an opinion on behalf of the Riigikogu, is of the opinion that in the contested part the Act is constitutional. The local authority right of self-organisation is not unlimited. The amendment seeks to reduce restrictions which could exclude persons with a real supporter base from municipal councils, thus seeking to make the municipal council more representative. Such an aim is legitimate. In their activities, Members of the Riigikogu are not subjected to any state agencies; therefore, this does not increase the risk that municipal councils might not be able to pass decisions independently. Considering the total number of mandates of the Riigikogu and rural municipal and city councils, it is not likely that members of the Riigikogu could make up the majority of municipal council members in the future. Even if such a situation arises in some local authority, by nature members of the Riigikogu do not form a uniform interest group whose interests could clash with the interests of other community members. Only members of the Riigikogu having a permanent residence in a local authority can be members of municipal councils, so that they can be presumed to be familiar with the local situation and can act in the interests of the local community. In essence, the interests of a member of the Riigikogu and of a municipal council are not opposed, because the functions and competence of the Riigikogu and a municipal council do not overlap. In the event of a conflict of interests, it is possible to proceed from the restrictions on activities and procedural restrictions laid down in the Anti-corruption Act. The working time of municipal councils can be arranged so as not to overlap with the working time of the Riigikogu. The contested provisions do not make membership of municipal councils mandatory for members of the Riigikogu but enable them to decide whether to combine the mandates or not.

Minister of Justice

33. The Minister of Justice asserts that the contested Act does not contravene the principle of the local authority right of self-organisation under § 154(1) of the Constitution, the principle of separation and balance of powers under § 4 of the Constitution, or the principle of incompatibility of offices or positions under § 63 of the Constitution. In the opinion of the Minister of Justice, the application by Kose Rural Municipal Council cannot be adjudicated to the full extent of the Act contested by it, because not all the provisions contested by it can violate local authority constitutional guarantees.

34. Members of the Riigikogu can become members of a municipal council only if they prove to be elected to a council on equal conditions with other candidates. Membership of municipal councils by Riigikogu members cannot interfere with the right of local authorities to decide local issues independently.

35. Deciding local issues is not exercise of state authority, nor does being a municipal council member amount to holding a state office within the meaning of § 63(1) of the Constitution. Enabling members of the Riigikogu to have a say in managing local issues in local authorities where they reside is legitimate. It cannot be concluded from the contested Draft Act and the materials related to its proceedings that the formal aim of the Act would have been to strengthen the central government in local authorities. The contested provisions do not amount to disproportionate interference with the local authority right of self-organisation.

Chancellor of Justice

36. The Chancellor of Justice finds that the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act, which enables a person to be simultaneously a member of the Riigikogu and of a municipal council, is constitutional.

37. The applications are not admissible insofar as they claim a conflict with §§ 4, 63 and 64 of the Constitution, because these do not establish local authority constitutional guarantees.

38. A distinction should be drawn between arguments concerning standing as a municipal council candidate while being a member of the Riigikogu and combining those positions after being elected. Arguments concerning standing as a municipal council candidate are not essential in assessing the provisions enabling

combining membership of these representative bodies.

39. The contested provisions do not interfere with the local authority right of self-organisation. The bases for forming a municipal council concern the external structure of local authorities to which the local authority right of self-organisation does not normally extend. Combining the positions does not affect independence in deciding local issues indirectly either. A municipal council member's freedom of decision is protected by the free mandate principle, giving rise to the freedom of a member of a representative body in their political choices. A member of the Riigikogu who is also a municipal council member may freely proceed from local interests when sitting in the council.

40. Local government autonomy might, instead, be negatively affected by a ban on combining the two positions, because this would not enable a Riigikogu member who is a local resident and has sufficient support from other local residents to start exercising their mandate upon being elected.

41. In any case, a possible conflict of interests of a Riigikogu member in passing decisions concerning financing local authorities occurs because members of the Riigikogu are at the same time residents of some local authority. People also stand as candidates for the Riigikogu in a specific constituency which includes only some local authorities. Not every potential conflict of interests leads to a constitutional impediment to combining the powers of a municipal council member and a Riigikogu member. In addition to restrictions on holding office, procedural restrictions can also be used to prevent a conflict of interests. However, even procedural restrictions do not cover all instances of a conflict of interests because this would not yield a reasonable result (§ 11(3) Anti-corruption Act).

42. The Riigikogu exercises supervision over the Government of the Republic. City and rural municipal councils are not subordinate to the Government of the Republic nor are they a part of the state executive branch. Denial of a vertical separation of powers or an erroneous claim as if the positions of a city or rural municipal council were a state office similar to the office of judge, Chancellor of Justice or prosecutor, does not lead to the conclusion that combining membership of the representative bodies violates the right under § 154 of the Constitution to decide and manage all local issues independently in accordance with the law.

43. Sections 4, 63(1) and 64 of the Constitution cannot be independently seen as constitutional guarantees for local authorities, so that examination of the relevant arguments in the applications should be declined. If the Supreme Court does not agree with this, the Chancellor of Justice notes that combining membership of the Riigikogu and of a municipal council is not contrary to these provisions. Section 4 of the Constitution does not give rise to separation of powers, as is established by Chapter XIV of the Constitution. Section 4 of the Constitution also does not give rise to the requirements relating to personal separation of powers, because the Constitution lays them down separately under requisite conditions, including in § 63(1) and § 64 of the Constitution. These provisions do not prevent members of the Riigikogu from taking up a position as a council member upon being elected to a city or rural municipal council, because being a municipal council member is not considered a state office. Cities and rural municipalities are not subordinate to the Government of the Republic, nor are they part of the executive authority. This is also the case in situations where local authorities discharge state-level functions because the function has been assigned to local authorities after considering their autonomy. The Constitution knowingly and consistently expresses the view that state authority and local authority are separate. Moreover, in many other democratic countries, e.g. the Republic of Finland, combining membership of state and local level representative bodies is allowed.

44. The materials of the Constitutional Assembly do not show either that a ban on combining the mandates of a member of the Riigikogu and of a municipal council was in mind while establishing § 63(1) of the Constitution. Section 63(1) of the Constitution is worded differently from §§ 84, 125 and 147 of the Constitution: while in the first case "state office" is mentioned, in the second case "elected and appointed offices" are mentioned. The difference in wording allows the conclusion that in the case of members of the Riigikogu the wish was only to exclude holding another state office and to preserve the opportunity to hold another elected or appointed office not being a state office. The prevalent understanding at the time of creating the Constitution that combining these offices was constitutional is also affirmed by the fact that

after adoption of the Constitution combining the positions of a member of the Riigikogu and of a municipal council was not banned by law. The Riigikogu banned simultaneous membership of the Riigikogu and of a municipal council by the Local Government Election Act adopted in 2002.

45. Combining positions is also not precluded by issues of temporal management of exercise of the mandates of a member of both the Riigikogu and of a municipal council. Usually participation in the work of a municipal council takes place alongside other principal activity and this inevitably has to be taken into account when determining the working time of a municipal council and its bodies.

CONTESTED PROVISIONS

46. The Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act (RT I, 21 June 2016, 16):

„§ 1. Section 24 of the Status of Members of the Riigikogu Act is repealed.

§ 2. The following amendments are made to the Local Government Organisation Act:

1) subsections (3) and (4) of section 17 are amended and worded as follows:

“(3) A municipal council has the right to pay remuneration to its members for participation in the work of the municipal council and compensation for expenses incurred in the performance of tasks of the municipal council on the basis of the submitted documents pursuant to the rates and procedure established by the municipal council. If a municipal council member is a member of the Riigikogu during their mandate, they are paid no remuneration for participation in the work of the municipal council.

(4) The position of chairman of the municipal council and deputy chairman may be remunerative based on a resolution of the municipal council. The chairman or deputy chairman of the municipal council working in remunerative positions are neither paid such additional remuneration, compensation or benefit, neither are any advantages not decided by the municipal council to be applied in respect of them. If the chairman or deputy chairman of the municipal council is a member of the Riigikogu during their mandate, they are paid no remuneration for performance of the duties of the chairman or deputy chairman of the municipal council.”

2) subsection (2) clause 1^1) of section 19 is amended and worded as follows:

“1^1) for the duration of their mandate as a member of the Government of the Republic until termination of their mandate as a member of the Government of the Republic:”

3) the Act is supplemented by § 72^3 worded as follows:

“§ 72^3. Member of the Riigikogu serving on municipal council

A member of the Riigikogu may perform the duties of the member of a rural municipality or city council as of the date of announcement of the results of the regular municipal council elections in 2017.

§ 3. Entry into force of the Act

This Act enters into force on 16 October 2017.

OPINION OF THE CHAMBER

47. The Chamber will first deal with the admissibility of the application (I). Next the Chamber will determine the extent of the review and explain that the contested provisions do not interfere with local authority constitutional guarantees (II).

I

48. Under § 7 of the Constitutional Review Court Procedure Act (CRCPA), a municipal council may lodge an application with the Supreme Court to repeal an Act if it contravenes local authority constitutional guarantees.

49. In line with Supreme Court case-law, the Supreme Court is competent to review on the merits applications lodged under § 7 of the CRCPA if the applications meet two preconditions: first, the application should be lodged by a municipal council and, second, the application should assert that a legal act mentioned in § 7 of the CRCPA, or a provision of that act, contravenes local authority constitutional guarantees (Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09, para. 44).

50. To meet the first precondition, a resolution of a municipal council to lodge an application with the Supreme Court under § 7 of the CRCPA must have been adopted by a majority of votes of the municipal council (§ 45(5) (second sentence) LGOA). In the instant case, all the municipal councils concerned have submitted proof to the Supreme Court that the councils have passed the resolutions to have recourse to the Supreme Court by a majority of votes of the membership of the councils concerned.

51. In addition, a precondition for lodging the application is also that a municipal council must vote on the final text of the application to be lodged with the Supreme Court (Supreme Court Constitutional Review Chamber judgment of 20 December 2016 in case No 3-4-1-3-16, para. 81). Materials submitted to the Supreme Court in the instant case do not show that any of the applicant councils had voted on the final text of the application. The municipal councils have only decided on lodging an application and on its main substance. However, the Chamber deems it important to take into account that such an interpretation of § 7 of the CRCPA was given only after the municipal councils had decided on lodging applications in the instant case. Earlier Supreme Court case-law on interpreting this provision has not been uniform (see Supreme Court Constitutional Review Chamber judgment of 20 December 2016 in case No 3-4-1-3-16, para. 82). The Chamber also has no reason to believe that the final texts of the applications lodged with the Supreme Court do not comply with the actual will of the councils that decided on lodging the applications. In view of these circumstances, the Chamber exceptionally deems the applications in the instant case admissible.

52. To meet the second precondition, the application must assert contravention of a local authority constitutional guarantee. In the instant case, all the applicants assert that the contested provisions of the Act on Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act contravene the local authority right of self-organisation, i.e. local government autonomy, arising from § 154(1) of the Constitution. The local authority right of self-organisation is undoubtedly a local authority constitutional guarantee, and the applications are admissible in this regard.

53. Although the reasoning of the applications notes a conflict with the local authority right of self-organisation, the substance of the applications is nevertheless wider and is not limited only to the local authority right of self-organisation. The municipal councils have also contested the provisions because of their alleged conflict with the principle of separation and balance of powers under § 4 of the Constitution and the principle of incompatibility of the office of member of the Riigikogu and other state office under § 63(1) of the Constitution. The Chamber finds that these provisions do not contain local authority constitutional guarantees and in this regard no basis exists for reviewing the applications (cf. Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09, paras 45–46 and 49). Section 4 of the Constitution lays down the principle of separation and balance of powers in relations between different branches of government and does not stipulate that exercise of local self-government should take place separately from the exercise of state authority. Section 63(1) of the Constitution does not prohibit a member of the Riigikogu from belonging to a municipal council because the Constitution clearly distinguishes the exercise of local self-government from the exercise of executive state authority (see §§ 14, 86, 139(1) of the Constitution). Section 154(1) of the Constitution guarantees local government autonomy from state authority in deciding local issues, which is the main substance of the work of municipal council members. Therefore, it is not correct to interpret discharge of the functions of a municipal council member as a state office within the meaning of § 63(1) of the Constitution. Lääne-Saare Rural Municipal Council in its supplementary

opinion has also agreed that § 4 and § 63(1) of the Constitution cannot be seen as a guarantee of local government autonomy, but has emphasised that the provisions are related to incompatibility of the mandates of a member of the Riigikogu and of a municipal council (see para. 25 of the judgment). The Chamber will deal with the possible compatibility of the positions of a member of the Riigikogu and a member of a municipal council below (see paras 64–71 of the judgment).

54. On the basis of the foregoing, all the applications are admissible insofar as they assert a conflict of the contested provisions with the local authority right of self-organisation laid down in § 154(1) of the Constitution. The Chamber will decline to examine the remainder of the applications.

II

55. Kõpu Rural Municipal Council, Lääne-Saare Rural Municipal Council and Vormsi Rural Municipal Council seek a declaration of unconstitutionality of § 1 and § 2 cl. 3) of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act. Kose Rural Municipal Council seeks a declaration of unconstitutionality of the above Act in its entirety.

56. In the opinion of the Chamber, the aim of the legislator in adopting the contested Act was first and foremost to introduce in the legal order the changes mentioned in § 1 and § 2 cl. 3) of the Act. Other provisions contained in the same Act are only of an ancillary nature, yet related in essence to the provisions establishing the main purpose of the Act. In the event of declaring § 1 and § 2 cl. 3) of the Act unconstitutional, entry into force of the remaining provisions of the Act would not be justified already because of the need to ensure legal clarity. Therefore, the Chamber proceeds from the broader application and will assess the contested Act in its entirety.

57. Section 1 of the Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act repeals § 24 of the Status of Members of the Riigikogu Act under which a member of the Riigikogu may not be a member of a city or rural municipality council during his or her mandate. Section 2 of the same Act stipulates that a member of the Riigikogu may perform the duties of a member of a rural municipality or city council as of the date of announcement of the results of regular municipal council elections in 2017. The main substance of the Act is to enable combining the mandates of a member of the Riigikogu and of a municipal council as of regular municipal council elections in 2017.

58. Local government autonomy, i.e. the right of self-organisation, arising from § 154(1) of the Constitution means the right of a local authority to decide independently all local issues in accordance with the law (see Supreme Court Constitutional Review Chamber judgment of 20 December 2016 in case No 3-4-1-3-16, para. 86). Interference with the right of self-organisation occurs in the event of any negative influence by the state authority on the right to decide all local issues independently (see Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09, para. 48).

59. Thus, interference with the local authority right of self-organisation presumes first and foremost interference by the state authority in deciding local issues.

60. In terms of the local authority right of self-organisation, a distinction should be drawn between the legal norms regulating external and internal local authority organisation. External local authority organisation includes the issues of establishing, structuring and functioning of local authorities and their bodies which, first and foremost in line with the principles of a unitary state and a democracy based on the rule of law, must be resolved uniformly throughout the country. Therefore, issues of external local authority organisation belong among state-level issues and under § 160 of the Constitution resolving them is the task of the legislator. In previous case-law, the Supreme Court has found that issues of external organisation of local authorities include, for example, laying down rules for electing municipal councils and their minimum size (Supreme Court Constitutional Review Chamber judgment of 9 June 2009 in case No 3-4-1-2-09, para. 44).

61. In the opinion of the Chamber, imposing restrictions on the right of Riigikogu members to belong to municipal councils also constitutes primarily an issue of external local authority organisation which, in line with the constitutional principle mentioned in the previous paragraph, cannot be regulated differently in different local authorities.

62. A local authority could not itself decide the issue of a municipal council member obtaining or not obtaining a mandate also because it amounts to interference with the passive suffrage of a person who was elected, and resolving it requires a legal basis under an Act (cf. Supreme Court Constitutional Review Chamber judgment of 1 July 2010 in case No 3-4-1-7-10, para. 8).

63. However, even resolving a state-level issue might interfere with the local authority right of self-organisation. Such interference would occur if a legislative amendment, even though not formally curbing a local authority's right of decision, would in any other manner restrict opportunities for municipal council members or persons in the service of a local authority to make decisions independently from the central government and without state interference in the decision-making process. The Supreme Court has previously held that, for example, changes in the system of local elections which make representation of local interests dependent on the central government, interfere with local government autonomy (Supreme Court *en banc* judgment of 19 April 2005 in case No 3-4-1-1-05, paras 17 and 18). The Supreme Court has also held that the local authority right of self-organisation is impinged upon in the event of suspension from office of a city or rural municipality mayor by the state authority because this results in interference with the decision on choice of a city or rural municipality mayor which under § 22(1) cl. 15) of the LGOA falls within the exclusive competence of a municipal council (Supreme Court Constitutional Review Chamber judgment of 15 January 2016 in case No 3-4-1-30-15, para. 19). In the opinion of the Chamber, in the instant case it is also necessary to assess whether the local authority right of self-organisation might be interfered with by enacting the contested Act, regardless of whether the aim of the Act is to resolve a state-level issue.

64. The applicants' main argument is that the legislative amendment interferes with the local authority right of self-organisation, since upon election of a member of the Riigikogu a risk exists that they would make their decisions in the municipal council by proceeding from nationwide interests, which, however, may stand in opposition to the interests of a local authority.

65. Section 62 of the Constitution gives rise to the principle of the free mandate of a member of the Riigikogu, which would primarily mean that a member of the Riigikogu cannot be recalled either by the people who elected them or by the political party on whose list they were elected to the parliament. In line with this principle, members of the Riigikogu represent not only the interests of their voters or their constituency in the Riigikogu but exercise state authority as representatives of the whole nation. Second, it follows from the free mandate principle that a member of parliament must be able to make political choices in accordance with their conscience (Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 15). The free mandate principle is also expressed in § 17 of the Status of Members of the Riigikogu Act.

66. The principle of representative democracy also gives rise to the principle of a free mandate of a member of a municipal council. This principle is expressed in § 17(2) of the LGOA, under which municipal council members must act in accordance with the law, rural municipality or city legislation and the needs and interests of the residents of the rural municipality or city. The principle of a free mandate of a member of a municipal council protects a member of a council similarly to the free mandate of a member of the Riigikogu against being recalled from the municipal council and entitles them to pass decisions in the council in accordance with their conscience.

67. The fact that a member of the Riigikogu uses their mandate in the parliament as a representative of the whole nation cannot lead to the conclusion that as a member of a local council they would pass decisions contrary to local interests. The free mandate principle ensures the opportunity for a person belonging simultaneously to both representative bodies to decide what is in the best interests of a local authority and its

residents, independently and in accordance with their conscience.

68. Combining the mandates ensures that a member of a representative body is better informed about problems requiring a solution on both national and local levels as well as an opportunity to take them into account in a balanced manner on both decision-making levels. A situation where members of the Riigikogu better understand local problems also ensures that the rights and interests of local authorities are more comprehensively taken into account in the legislator's activities.

69. The Chamber concedes that the possibility to combine the mandates of a member of the Riigikogu and of a municipal council may foster a certain intertwining of the national and local level of political decision-making. However, the principle of local government autonomy does not require that persons deciding local issues should not have the slightest connection with deciding state-level issues, nor is it possible to rule out the existence of any opposing interests in the activity of members of a municipal council. This can already be deduced from the principle of party political democracy enshrined in the principle of democracy because, in line with this principle, the central political forces in Estonia are political parties which mostly strive towards the aim of simultaneous exercise of both national and local government (cf. Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 31). If members of a political party represented in the Riigikogu or otherwise exercising state authority belong to a municipal council, the possibility of a similar intertwining of interests is also present in their activities regardless of the fact that they personally are not members of the Riigikogu.

70. The applicants have also asserted that the need – resulting from combining the mandates – to take into account the working time of the Riigikogu when setting the working time of a municipal council also interferes with local autonomy. The contested Act does not impose an obligation on local authorities to arrange their working time so as to take into account the working time of the Riigikogu. In line with § 44(1) (third sentence) of the LGOA, the rules of procedure of a municipal council, including working time, are established by the municipal council itself, and the contested Act does not restrict the competence of a municipal council. Since normally a municipal council is not a council member's principal place of work, working time should be arranged by agreement between the council members so as to take a balanced account of all the interests of members of the municipal council, including their need to continue employment in their principal job. A member of the Riigikogu, defined under § 22(1) of the Status of Members of the Riigikogu Act as a person having their principal place of employment in the parliament, is no different from the other members of a municipal council, and the contested Act does not oblige a municipal council to place the needs and interests of a member of the Riigikogu above the interests and needs of other council members.

71. As a rule, the requirements of neither the Civil Service Act nor the Employment Contracts Act extend to the tasks of a member of the Riigikogu and of a member of a municipal council. Regardless of the possibility of legal consequences (e.g. suspension of the powers of a member of a municipal council under § 19(2) cl. 4) LGOA), the responsibility of a member of a representative body for proper performance of their working duties, including complying with the working time of the representative body, is first and foremost political and not legal by nature. A person who has been elected to both representative bodies simultaneously must themselves find a suitable balance between carrying out the mandates, risking political responsibility in the event of neglecting their duties. If a person is unable to reconcile carrying out the duties arising from both mandates due to reasons of time, the extent of duties or for any other reason, they can always give up one of the mandates or, in the cases allowed by law, temporarily suspend their powers.

72. The contested Act also does not impinge on the opportunity of candidates coming from the local community to stand as candidates or to be elected in municipal council elections. Members of the Riigikogu also have the right to stand as candidates in municipal council elections under the current law. The contested Act does not expand this right nor does it restrict the opportunity of other persons to stand as candidates or to be elected. Therefore, in the instant case no direct parallel can be drawn with the case of prohibition of local election coalitions dealt with in the Supreme Court *en banc* judgment of 19 April 2005 in case No 3-4-1-1-05, as the applicants have done.

73. The Act Amending the Status of Members of the Riigikogu Act and the Local Government Organisation Act does not contravene the Constitution insofar as indicated in the applications by the municipal councils, and relying on § 15(1) cl. 6) of the Constitutional Review Court Procedure Act the Chamber dismisses the applications.
