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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	5-23-31
Date of judgment	22 June 2023
Judicial panel	Chairman: Villu Kõve; members: Hannes Kiris, Heiki Loot, Nele Parrest
Case	Complaint by 38 members of the Riigikogu against the Riigikogu resolution of 15 May 2023 and resolution of 16 May 2023, and complaint by the Riigikogu Martin Helme against the Riigikogu resolution of 15 May 2023

Participants in proceedings and persons involved in proceedings

Members of the Riigikogu Martin Helme, Mart Helme, Hella Laar, Arvo Aller, Ants Frosch, Rene Kokk, Anti Poolamets, Henn Vooglaid, Rain Epler, Kalle Grünthal, Kert Kingo, Siim Poolamets, Jaak Valge, Jaak Aab, Vadim Belobrovstev, Enn Hanimägi, Aleksei Jevgrafov, Jaanus Karilaid, Ester Karuse, Andrei Korobeinik, Anastassia Kovalenko-Kõlvart, Lauri L. Jüri Ratas, Kersti Sarapuu, Aleksandr Tšaplõgin, Aivar Kokk, Mart Maastik, Andres Metsoja, Urmas Reinsalu, Helir-Vald Sibus, Riina Solman, representative attorney-at-law Paul Ke

Riigikogu, representatives attorneys-at-law Paul Varul, Triin Šipilov

Government of the Republic

Manner of examination

Written procedure

OPERATIVE PART

1. To decline to examine the complaint by members of the Riigikogu against the Riigikogu resolution of 15 May 2023 to discontinue asking procedural questions about the approval of the agenda.

2. To deny the complaint by members of the Riigikogu against the Riigikogu resolutions of 15 and 16 May 2023 to discontinue submission of drafts and interpellations, and the complaint by member of the Riigikogu Martin Helme against the resolution of 22 May 2023 to discontinue submission of drafts and interpellations.

FACTS AND COURSE OF PROCEEDINGS

1. In the frame of the fourth working week of the first session of the XV composition of the Riigikogu, four regular sittings were held on 8–11 May 2023 and a Question Time on 10 May. The plans for the working week included the first reading of the Draft Act (17SE) on amending the Family Benefits Act and amending the Draft Act on amending the Family Benefits Act, the Family Law Act and the Employment Contracts Act, as well as replying to two interpellations. During these sittings, members of the Riigikogu submitted drafts and interpellations as well as procedural questions and protests, so that the Riigikogu did not reach the stage of approval of the agenda of the working week or a debate on items on the agenda. Based on a resolution of the Board of the Riigikogu, the President of the Riigikogu Lauri Hussar convened an additional sitting of the Riigikogu for 12 May 2023 whose planned agenda was to include the above-mentioned Draft

Act 17 SE. However, at that sitting – lasting from 15.00 on 12 May to 21.00 on 13 May – the Riigikogu still did not come to a debate on items on the agenda due to submission of procedural questions, drafts and interpellations.

2. The planned agenda of the fifth working week (15–18 May 2023) of the first session of the Riigikogu included the first reading of the Draft Act 17 SE along with 9 more legislative drafts, reply to interpellations, and the 2022 annual report of the Bank of Estonia.

3. At the beginning of the Riigikogu sitting on 15 May 2023, members of the Riigikogu once again asked numerous procedural questions. At 16.55, the President of the Riigikogu, who was chairing the sitting, put to the vote a proposal to discontinue asking procedural questions about the approval of the agenda. After the end of the voting time but before confirmation of the voting results, member of the Riigikogu Helle-Moonika Helme submitted a protest on the ground that, before the vote, the chair of the sitting had failed to indicate this to members of the Riigikogu by sounding a signal. The chair of the sitting granted the protest. The chair of the sitting did not announce or confirm the voting results.

4. At the same sitting on 15 May 2023 at 16.58, the President of the Riigikogu once again put to the vote a proposal to discontinue asking procedural questions about the approval of the agenda. 52 members of the Riigikogu voted in favour of the proposal, with no votes against and no abstentions. The chair of the sitting confirmed the result of the vote and deemed the resolution to have been adopted. At 17.14, the President of the Riigikogu put to the vote approval of the agenda of the fifth working week of the first session of the Riigikogu plenary assembly. 51 members of the Riigikogu voted in favour of the proposal, with 37 votes against and no abstentions. After the approval of the agenda, members of the Riigikogu began to submit drafts and interpellations.

5. At the sitting starting at 17.56 and ending at 18.37 on 15 May 2023, the Board of the Riigikogu discussed issues concerning submission of drafts and interpellations. Based on § 13(2) clause 18 of the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA), the President of the Riigikogu and the First Vice-President Toomas Kivimägi proposed to discontinue submission of drafts and interpellations at the Riigikogu sitting of 15 May 2023. They found that even though initiating drafts and submitting interpellations are extremely important constitutional rights of a member of the Riigikogu, as a result of the exercise of this right the Riigikogu at its sitting during this week had been unable to deal with its other tasks, including debating items on the agenda. In the interests of the Riigikogu as a whole, it is justified to take steps to find a balance between different rights to enable the Riigikogu to perform all its tasks. Since the RRPIRA lacks regulatory provisions to guarantee the right to initiate drafts and submit interpellations in such a way that at a sitting it would be possible to debate topics on the agenda, this can be regarded as a procedural issue not regulated by law. The Second Vice-President of the Riigikogu Jüri Ratas did not support the proposal. Since the Board of the Riigikogu could not reach consensus, the relevant resolution of the Board was not adopted.

6. At the Riigikogu sitting of 15 May 2023 at 19.23, the First Vice-President of the Riigikogu put to the vote the proposal of the President and of the First Vice-President of the Riigikogu to discontinue submission of drafts and interpellations at the Riigikogu sitting on 15 May 2023. 53 members of the Riigikogu voted in favour of the proposal, with no votes against and no abstentions.

7. At the sitting starting at 11.11 and ending at 11.35 on 16 May 2023, the Board of the Riigikogu discussed issues concerning submission of drafts and interpellations. The President and the First Vice-President of the Riigikogu once again put forth the position that they had already submitted at the meeting of the Board of the Riigikogu the day before (see para. 5 of the present judgment), and based on § 13(2) clause 18 of the RRPIRA proposed to discontinue submission of drafts and interpellations at the Riigikogu sitting of 16 May 2023. The Second Vice-President of the Riigikogu did not support the proposal and the resolution was not adopted.

8. At the Riigikogu sitting of 16 May 2023 at 12.00, the First Vice-President of the Riigikogu put to the vote the proposal of the President and of the First Vice-President of the Riigikogu to discontinue submission of drafts and interpellations at the Riigikogu sitting of 16 May 2023. 55 members of the Riigikogu voted in favour of the proposal, with no votes against and no abstentions.

9. At the sitting starting at 16.57 and ending at 17.02 on 22 May 2023, the Board of the Riigikogu discussed issues concerning submission of drafts and interpellations. Based on § 13(2) clause 18 of the RRPIRA, the President and the First Vice-president of the Riigikogu proposed to discontinue submission of drafts and interpellations at the Riigikogu sitting of 22 May 2023. The Second Vice-President of the Riigikogu did not support the proposal and the resolution was not adopted.

10. At the Riigikogu sitting of 22 May 2023 at 17.44, the First Vice-President of the Riigikogu put to the vote the proposal of the President and of the First Vice-President of the Riigikogu to discontinue submission of drafts and interpellations at the Riigikogu sitting of 22 May 2023. 50 members of the Riigikogu voted in favour of the proposal, with no votes against, and one member of the Riigikogu abstaining.

11. On 25 May 2023, 38 members of the Riigikogu (hereinafter the applicants) lodged a complaint with the Supreme Court, seeking annulment of the following:

1) Riigikogu resolutions of 15 May 2023 to discontinue asking procedural questions about the approval of the agenda at the Riigikogu sitting of 15 May 2023;

2) Riigikogu resolution of 15 May 2023 to discontinue submission of drafts and interpellations at the Riigikogu sitting of 15 May 2023;

3) Riigikogu resolution of 16 May 2023 to discontinue submission of drafts and interpellations at the Riigikogu sitting of 16 May 2023.

The complaint was registered by the Supreme Court as constitutional review case No 5-23-31.

12. On 1 June 2023, member of the Riigikogu Martin Helme lodged a complaint with the Supreme Court, seeking annulment of the Riigikogu resolution of 22 May 2023 to discontinue submission of drafts and interpellations at the Riigikogu sitting of 22 May 2023. The complaint was registered by the Supreme Court

as constitutional review case No 5-23-32.

13. By an order of 5 June 2023, the Supreme Court Constitutional Review Chamber joined the constitutional review cases No 5-23-31 and No 5-23-32 in unified proceedings and assigned number 5-23-31 to the joined constitutional review case.

THE POSITION OF THE APPLICANTS IN THE SUPREME COURT

14. The applicants assert that under § 16 of the Constitutional Review Court Procedure Act (CRCPA) they have standing to challenge a Riigikogu resolution by which submission of procedural questions is discontinued at a Riigikogu sitting. Members of the Riigikogu have the right to effectively exercise their mandate. The mandate is exercised in the Riigikogu in accordance with the procedural rules set out in the RRPIRA. Under § 74(2) of the RRPIRA, a member of the Riigikogu may ask the chair of the sitting questions about the conduct of the sitting, i.e. raise points of order. This helps a member of the Riigikogu understand the procedure applicable to the work at the Riigikogu and improve the exercise of their mandate. The Riigikogu resolution restricting the right of members of the Riigikogu to raise points of order curtails the right to effectively exercise the mandate and violates the applicants' rights within the meaning of § 16 of the CRCPA.

15. The RRPIRA does not confer on the chair of the Riigikogu sitting the right to put to the vote a proposal to discontinue asking procedural questions. No such right arises from § 72 of the RRPIRA either. Section 72(1) of the RRPIRA expressly has in mind questions relating to items on the agenda during whose deliberation the chair of the sitting may request that the question be brought to a close. Section 72(2) of the RRPIRA provides for a possibility to only decide the conclusion of comments by a vote.

16. Section 16 of the CRCPA also gives rise to the applicants' right to challenge a Riigikogu resolution by which submission of drafts and interpellations is discontinued. The challenged resolution concerns constitutionally protected core aspects of parliamentary democracy and of the mandate of a member of the Riigikogu, i.e. the right to submit drafts and the right to submit interpellations. The Supreme Court Constitutional Review Chamber in para. 35 of the judgment in case No 5-21-32/8 found that, with regard to an issue of such significance, a member of the Riigikogu enjoys the right under § 16 of the CRCPA to initiate in the Supreme Court a dispute arising from an internal relationship. In the opinion of the applicants, the right to submit drafts arises from § 65 of the Constitution of the Republic of Estonia, and it is explicitly mentioned in § 90(1) clause 1 of the RRPIRA. The right to submit interpellations is explicitly laid down by § 74 of the Constitution and further elaborated in §§ 139–141 of the RRPIRA. A Riigikogu resolution on discontinuation of submission of drafts and interpellations restricts the exercise of these rights because, as of the moment of adoption of the resolution, it completely deprives members of the Riigikogu of the possibility to submit drafts and interpellations, and violates the applicants' rights within the meaning of § 16 of the CRCPA.

17. Riigikogu resolutions by which submission of drafts and interpellations was discontinued at the

Riigikogu sittings of 15 and 16 May 2023 are unlawful since neither the Constitution nor the law gives rise to powers to restrict these rights. The principle of legality arising from § 3(1) of the Constitution applies to all activities by state authority, including activities of the Riigikogu. For this reason, the activities of the Riigikogu, including adoption of resolutions of any substance, must rely on a legal basis and be compatible with the powers arising from law. The legal basis for restricting submission of drafts and interpellations cannot be deduced from § 13(2) clause 18 of the RRPIRA which empowers the Board of the Riigikogu to decide procedural issues not regulated by law. Already due to their nature decisions restricting constitutionally protected core aspects of the mandate of a member of the Riigikogu cannot be procedural. Nor are the challenged resolutions procedural by their effect since they do not concern the procedure or manner of submission of interpellations and drafts but are essentially substantive and result in abolishment of rights. Moreover, no general powers for restricting core rights can be granted to the Board of the Riigikogu in line with the non-delegation principle, or to the majority of members of the Riigikogu under § 16(4) of the RRPIRA. The bases and extent of restricting core rights must be precisely laid down by law. Arising from the principle of self-organisation, the Riigikogu itself is entitled to shape these legal bases by establishing rules in the RRPIRA according to § 69 of the Constitution.

18. Annulment of the challenged Riigikogu resolutions also affects the lawfulness of other resolutions adopted at the Riigikogu sittings on 15 May 2023 as well as subsequently. The applicants believe that in the event of annulment of the challenged resolutions the work of the Riigikogu should resume from the point where it was on 15 May 2023, i.e. at the time of proceedings concerning the adoption of the agenda. In that case, the applicants can exercise the rights arising from their mandate in accordance with the law and the Riigikogu can resolve the deadlock lawfully, first and foremost by finding a compromise. Moreover, resolving a deadlock by compromise is the best expression of parliamentary democracy as it also takes account of the wishes of the minority alongside the parliamentary majority.

19. The reasons given by M. Helme concerning the standing and unlawfulness of the challenged Riigikogu resolution coincide with the positions presented in the complaint by 38 members of the Riigikogu.

OPINION OF THE RIIGIKOGU

20. The complaint should not be examined since the applicants lack standing. The Supreme Court is not competent to resolve complaints against Riigikogu resolutions concerning working arrangements, including disputes between the parliamentary majority and minority. Under § 16 of the CRCPA, substantive resolutions of the Riigikogu, i.e. Riigikogu resolutions within the meaning of § 65(1) of the Constitution, can be challenged. However, if the Supreme Court still examines the complaint on the merits, the complaint should be denied. The right of members of the Riigikogu to submit procedural questions about the agenda can be restricted under § 72(2) of the RRPIRA if this is necessary to continue substantive work of the Riigikogu. To ensure the work of the Riigikogu, it was also necessary to impose a time-limit on the right of members of the Riigikogu to submit drafts and interpellations. Currently, the opposition has submitted drafts and interpellations in order to obstruct the conduct of the Riigikogu sitting and paralyse the work of the parliament. The RRPIRA does not stipulate the time for submitting drafts and interpellations, so the Board of the Riigikogu was able to decide this issue on the basis of § 13(2) clause 18 of the RRPIRA. Since the Board did not reach consensus, the matter was decided by the plenary assembly.

21. The complaint by M. Helme should not be examined on account of absence of standing. The complaint does not justify how the rights of the applicant were specifically violated. At the Riigikogu sitting on 22 May 2023, M. Helme submitted drafts and interpellations on two occasions. The number of drafts and interpellations to be submitted at one time is not limited. So the applicant's rights were not violated. However, if the Supreme Court decides to examine the complaint by M. Helme, it should be denied.

OPINION OF THE GOVERNMENT OF THE REPUBLIC

22. The massive amount of interpellations submitted by members of the Riigikogu and the obstruction of proceedings on drafts affect the work of the Government of the Republic. During a very short period, 345 interpellations were submitted at the Riigikogu sittings, and 20 days are provided for replying to them. Submission of interpellations and replying to them may not paralyse the work of the executive, and if the right of interpellations is used for a different purpose than exercising scrutiny over the executive, i.e. for obstruction, such activity is not compatible with the Constitution. By intentionally obstructing the work of the Government, members of the Riigikogu interfere with the Government's constitutional right to perform its tasks.

23. Under § 87 clause 4 of the Constitution, the Government is ensured the right to submit draft legislation to the Riigikogu. Through draft legislation, the Government can exercise executive power for which it is obliged by § 86 of the Constitution. At the Riigikogu sittings on 8–10 May 2023, representatives of the Government were unable to submit drafts to the Riigikogu; this possibility only arose on 11 May 2023. The opposition has wished to achieve control over what kinds of drafts the executive may or may not submit to the Riigikogu, thereby interfering with the right of the Government of the Republic enshrined in § 87 clause 4 of the Constitution to submit drafts to the Riigikogu. Obstructing the submission of drafts and approval of the agenda of the Riigikogu also restricts the right and duty of the Riigikogu to carry out proceedings on draft legislation.

OPINION OF THE CHAMBER

24. In this case, the dispute is over whether the Riigikogu could discontinue submission of procedural questions about the approval of the agenda for the working week of the plenary assembly at the sitting of 15 May 2023 and submission of drafts and interpellations at the sittings of 15, 16 and 22 May 2023. The Chamber will first ascertain whether members of the Riigikogu have standing in this dispute (I). Then the Chamber will assess the lawfulness of the resolutions challenged (II).

25. Under § 16 of the CRCPA, any person who finds that their rights have been infringed by a resolution of the Riigikogu may file a petition with the Supreme Court to annul that resolution. The Riigikogu in its opinion finds that examination of the complaint should be declined since the complaint is aimed at the protection of the rights of the opposition against the parliamentary majority and not the protection of the rights arising from the status of a member of the Riigikogu. The Riigikogu also asserts that, under § 16 of the CRCPA, only substantive resolutions of the Riigikogu can be challenged, i.e. Riigikogu resolutions within the meaning of § 65(1) of the Constitution. In the opinion of the Riigikogu, resolutions subject to a complaint under § 16 of the CRCPA must have an external effect, which the challenged resolutions lack, however.

26. The Supreme Court Constitutional Review Chamber has found that the rights subject to protection under § 16 of the CRCPA should be understood as including mostly the rights of individuals against the state in an external legal relationship, first and foremost fundamental rights, while § 17 of the CRCPA sets out a closed list of instances where a member of the Riigikogu may challenge a resolution of the Board of the Riigikogu in an internal legal relationship (Supreme Court Constitutional Review Chamber judgment of 23 December 2021 No 5-21-32/8, para. 31). However, the Chamber conceded that in certain cases § 16 of the CRCPA ensures judicial protection in internal relationships where the plenary assembly of the Riigikogu allegedly violates the rights of a member of the Riigikogu (the judgment cited above, para. 32). In doing so, the Chamber emphasised that § 16 of the CRCPA does not ensure standing for protection of whichever rights of a member of the Riigikogu laid down by the RRPIRA, but only in cases where the challenged Riigikogu resolution allegedly violates the constitutionally protected core aspects of the mandate of a member of the Riigikogu (ibid., para. 34). Thus, the Supreme Court must clarify whether the right of a member of the Riigikogu to ask procedural questions and submit drafts and interpellations constitutes constitutionally protected core aspects of the mandate of a member of the Riigikogu (§ 62 Constitution).

27. The Constitution protects both holding and exercising the mandate of a member of the Riigikogu. The Supreme Court has found that, arising from the Constitution, in order to exercise their mandate a member of the Riigikogu may participate in the work of the Riigikogu on equal conditions with other members of the Riigikogu (§ 62 in combination with § 12(1) of the Constitution, see Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, paras 14, 16 and 17), the right to form and belong to a parliamentary group (§ 71(2) Constitution, see Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05), the right to request an unmediated debate at a Riigikogu sitting (§§ 65 and 62 Constitution, see Supreme Court Constitutional Review Chamber judgment of 23 December 2021 in case No 5-21-32/8, para. 35), and the right to receive sufficient remuneration ensuring their independence and freedom of exercise of the mandate (§ 75 Constitution, see Supreme Court *en banc* judgment of 23 February 2009 in case No 3-4-1-18-08, para. 29). The exercise of the mandate undeniably also relates, for example, to the right to initiate laws (§ 103(1) clause 1 Constitution), the right to submit interpellations (§ 74 Constitution), and the right to speak and vote in the Riigikogu and its bodies (§ 62 Constitution).

28. The applicants have challenged the Riigikogu resolutions of 15 May 2023 on discontinuation of procedural questions. According to the transcript of the Riigikogu sitting of 15 May 2023, the Riigikogu only adopted one resolution to discontinue asking procedural questions about the approval of the agenda.

29. The Constitution does not mention the right of a member of the Riigikogu to submit questions about the

procedure for conducting a sitting. However, it follows from the Constitution that the procedure for exercising the functions of the Riigikogu, including the rights of members of the Riigikogu in participating in the exercise of the functions of the Riigikogu, must be regulated in a law on the rules of procedure of the Riigikogu and a law on the internal rules of the Riigikogu (§ 69, § 70, § 71(3), § 72(2), § 104(1) and (2) clause 6 Constitution).

30. The right of a member of the Riigikogu to ask questions about the procedure for the conduct of a sitting is laid down by § 74(2) of the RRPIRA: “Where a member of the Riigikogu wishes to raise a point of order, they may ask a question of the chair of the sitting.” A Riigikogu sitting is a constitutionally provided form of work of the Riigikogu plenary assembly (see e.g. § 66, § 72(1) Constitution). For the effective exercise of parliament’s powers as a collegial body composed of members representing different political positions, rules of procedure are particularly important. The Supreme Court agrees with the applicants that the better a member of the Riigikogu understands the rules for conducting a sitting, the more efficiently they will be able to exercise their mandate, in this case, to participate in debates taking place at a sitting of the Riigikogu. Despite this, the possibility for members of the Riigikogu to ask questions about the procedure for conducting a sitting cannot be inferred from the principle of parliamentary democracy or from the provisions regulating the constitutional status of a member of the Riigikogu, which is why it is not one of the constitutionally protected aspects of parliamentary democracy or of the mandate of a member of the Riigikogu.

31. The right to ask the chair of a sitting questions about the procedure for conducting a sitting must be regarded as a procedural possibility supporting the participation of a member of the Riigikogu in a sitting. How to ensure that members of the Riigikogu are informed about the rules for conducting a sitting is a matter for the Riigikogu itself to decide within the framework of the right of self-organisation. Previously, the Supreme Court has noted that the right of self-organisation of the Riigikogu arises from § 65 clause 16 of the Constitution in conjunction with the principle of separation of powers and means that the parliament must be autonomous in organising the exercise of the powers expressly conferred on it by the Constitution and generally has the right to determine the internal organisation and procedure for exercising its powers; the right of self-organisation gives the legislator a relatively broad margin of discretion in matters concerning its own activities (Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 42). The right of self-organisation entails an extensive margin of appreciation and discretion of the Riigikogu in organisational and procedural matters of the work of the Riigikogu (Supreme Court Constitutional Review Chamber judgment of 21 December 2021 No 5-21-32/8, para. 40).

32. The Chamber does not see how the resolution of the Riigikogu to discontinue asking procedural questions about the approval of the agenda on 15 May 2023 interferes with the exercise of the mandate of a member of the Riigikogu. The applicants’ assertion that better knowledge of the rules will ensure more effective exercise of the mandate is too general. Consequently, in that respect the complaint is not admissible and its examination must be declined.

33. 38 members of the Riigikogu have also challenged the Riigikogu resolutions of 15 and 16 May 2023, and member of the Riigikogu M. Helme the Riigikogu resolution of 22 May 2023, by which the submission of drafts and interpellations at those sittings was discontinued.

34. The right of a member of the Riigikogu to initiate laws is laid down by § 103(1) clause 1 of the Constitution and the right of a member of the Riigikogu to submit interpellations by § 74 of the Constitution.

The right of a member of the Riigikogu to submit a draft resolution of the Riigikogu can be inferred from § 65 clause 1 of the Constitution.

35. The right of legislative initiative guaranteed in § 103(1) clause 1 of the Constitution includes the possibility for a member of the Riigikogu to submit a regulatory proposal in the form of a draft to the Riigikogu and the right to request that it be accepted for proceedings and discussed in accordance with the procedure laid down by the law on the Riigikogu rules of procedure (§ 104(1) Constitution). The right to initiate a law is not unlimited. The Riigikogu may prescribe the procedure for submitting and accepting a draft and establish formal requirements regarding a draft that allow the Riigikogu to effectively discuss the draft. In principle, the same applies to a draft resolution of the Riigikogu.

36. Section 74 of the Constitution lays down the right of interpellation of a member of the Riigikogu. The right of interpellation is also not unlimited. Similarly to the legislative initiative, in a law on the Riigikogu rules of procedure and a law on the Riigikogu internal rules provided for in the Constitution, the Riigikogu may lay down, among other things, the procedure for submitting and responding to interpellations (§ 69 and § 104(1) clause 6 Constitution).

37. In the present case, the applicants challenge the resolutions of the Riigikogu restricting the submission of drafts and interpellations at three sittings of the Riigikogu. In general, the procedure for submission of drafts and interpellations is laid down by the RRPIRA. Under § 91 of the RRPIRA, drafts are submitted to the chair of the sitting of the Riigikogu from the rostrum in the session hall before the beginning of deliberation of the matters on the agenda, and the presenter of a draft may take up to two minutes to introduce the draft. Exceptions to the general procedure, set out in subsections 2 and 3 of the same section, are irrelevant in the present case. With regard to an interpellation, § 139(3) of the RRPIRA lays down that it must be submitted publicly to the chair of the sitting of the Riigikogu at the beginning of the sitting. It follows from these provisions that drafts and interpellations may not be submitted by members of the Riigikogu at any time, but only at a Riigikogu sitting (both at a regular sitting, a sitting held within an extraordinary session, and at an additional sitting).

38. In its opinion concerning the complaint by 38 members of the Riigikogu, the Riigikogu finds that restricting the time allotted for the submission of drafts and interpellations during a sitting is an internal organisational issue of the Riigikogu and is covered by the right of self-organisation of the Riigikogu. In its opinion concerning the complaint by member of the Riigikogu M. Helme, the Riigikogu is of the opinion that the applicant does not have standing, as he was able to submit drafts and interpellations at the Riigikogu session on 22 May 2023, and the complaint does not justify how the rights of the applicant have been specifically violated.

39. The Chamber agrees with the position of the Riigikogu that establishing the procedure for submission of drafts and interpellations is covered by the right of self-

organisation of the Riigikogu. At the same time, however, the submission of drafts and interpellations is closely related to the constitutionally provided right to initiate a law and the exercise of the right of interpellation. The submission of a draft or interpellation is a prerequisite for their further handling. Since, according to law, a draft and interpellation can only be submitted at a Riigikogu sitting, limiting the time allowed for submission of a draft or interpellation at a sitting interferes with the rights of members of the Riigikogu arising from § 103(1) clause 1, § 74 and § 65 clause 1 of the Constitution, specified in paragraphs 34–36 of this judgment.

40. In the opinion of the Chamber, the fact that a member of the Riigikogu has already used the opportunity to submit a draft or an interpellation at the same sitting does not rule out interference with their right of legislative initiative and the right of interpellation if the Riigikogu, by its resolution, limits the time for submission. In practice, the Riigikogu has accepted that members of the Riigikogu go the rostrum more than once to submit drafts or interpellations. Also, within the statutory framework, a member of the Riigikogu has the right to decide for themselves when they wish to submit their draft or interpellation.

41. Complaints are therefore admissible in so far as they challenge the resolutions of the Riigikogu to discontinue submission of drafts and interpellations at the Riigikogu sittings on 15, 16 and 22 May 2023.

II

42. Next, the Chamber will analyse whether the Riigikogu resolutions of 15, 16 and 22 May 2023, by which the submission of drafts and interpellations was discontinued at the sittings held on those dates, violated, as the applicants claim, the constitutional rights of the members of the Riigikogu to initiate laws and resolutions and to submit interpellations.

43. As noted in paragraph 37 of this judgment, in order for a draft to be accepted for debate and for an interpellation to be forwarded to the addressee for a response, it must be handed over to the chair at a Riigikogu sitting. According to § 91(1) of the RRPIRA, drafts must be submitted “before the beginning of deliberation of the matters on the agenda” and the presenter of a draft may take up to two minutes to introduce the draft. Under § 139(3) of the RRPIRA, interpellations must be submitted “at the beginning of the Riigikogu sitting” and no introduction of interpellations is stipulated by the RRPIRA. Despite the different wording of the relevant provisions, in practice of the Riigikogu the submission of drafts and interpellations has been treated in the same way: the submission takes place at the beginning of the sitting before proceeding to the agenda items, and in both cases the submitter is allowed two minutes to present their initiative.

44. There is no dispute that the RRPIRA does not lay down how much time should be allowed for the submission of drafts and interpellations at the beginning of the sitting. Under normal circumstances, this has not caused any disputes or conflicts – as much time is allotted as necessary, so that all those who wish can submit drafts and interpellations. In a situation where part of the members of the Riigikogu submit drafts and interpellations in such a number that it prevents the Riigikogu from proceeding to deliberation of items on the agenda, the question arises as to whether and if so, under what conditions, the time for submission can be restricted at one sitting.

45. The applicants assert that there is no basis in the RRPIRA to discontinue the submission of drafts and interpellations. Two members of the Board of the Riigikogu, as the body organising the work of the Riigikogu, and the plenary assembly of the Riigikogu have interpreted § 13(2) clause 18 of the RRPIRA so that, *inter alia*, the time for submission of drafts and interpellations at specific sittings can be considered a procedural issue not regulated by the RRPIRA or any other Act, allowing to limit this time in certain cases.

46. It is not possible to exhaustively regulate in the RRPIRA all the issues arising in the conduct of Riigikogu sittings, so that the provision in question provides for the possibility of filling the gaps that have appeared, taking into account the meaning and purpose of the rules of procedure. Therefore, the Chamber is of the opinion that § 13(2) clause 18 of the RRPIRA provides a legal basis for regulating the procedure for the submission of drafts and interpellations as a procedural issue.

47. Next, the Chamber needs to take a position on the question whether the discontinuation of the submission of drafts and interpellations at the Riigikogu sittings on 15, 16 and 22 May 2023 violated the right of members of the Riigikogu to initiate laws and resolutions and submit interpellations.

48. During the mandate of the current parliament, members of the Riigikogu have had the opportunity to submit drafts and interpellations at all sittings. Also, the time of the 4th working week of the Riigikogu plenary assembly (8–12 May 2023) and the additional sitting held on 12 and 13 May 2023 was spent, among other things, on the submission of drafts and interpellations, so that the Riigikogu was unable to debate the items planned on the agenda. In its opinion, the Riigikogu notes that on 8–13 May 2023 the sittings of the Riigikogu lasted for a total of 65 hours, and pointed out that, for example, a year ago, i.e. in May 2022, submission of interpellations and drafts at 12 sittings took only 32 minutes. The Government of the Republic in its opinion indicates that in a short period members of the Riigikogu submitted 345 interpellations, which the government estimates would take 345–1035 hours to answer.

49. Based on the foregoing, it cannot be argued that members of the Riigikogu did not have enough time to submit their drafts and interpellations at the sittings held so far. Although the time for the submission of drafts and interpellations was restricted at the Riigikogu sittings on 15, 16 and 22 May 2023, such a restriction is justified by other values arising from the Constitution and the competences of other constitutional institutions.

50. Previously, the Supreme Court has found that one of the legitimate objectives for restricting the rights of members of the Riigikogu is the effective functioning of the parliament (see Supreme Court Constitutional

Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 25). The work of the Riigikogu must be organised so that the Riigikogu can perform all its tasks arising from the Constitution. To this end, the RRPIRA provides for a number of temporal and other restrictions. Although the submission of draft laws is related to the legislative function of the Riigikogu and is important for performing this function, the Riigikogu must also debate these drafts, form a position on them and decide on their adoption or rejection. The submission of interpellations constitutes the exercise of parliamentary scrutiny. Through interpellations, the political responsibility of the government towards the Riigikogu is first and foremost realised. However, the function of parliamentary scrutiny is not realised by submission of interpellations alone, but interpellations must also be answered at a Riigikogu sitting, and for this the Constitution lays down a specific deadline. The working arrangements of the Riigikogu must ensure that members of the Riigikogu receive a response within the time-limit prescribed in § 74(2) of the Constitution. The Chamber finds that since, among other things, with the submission of drafts and interpellations, a situation developed in the Riigikogu where, during the entire working week and one additional sitting, the items planned on the agenda could not be debated, the measures taken by the members of the Board of the Riigikogu and the plenary assembly to ensure the working capacity of the Riigikogu were justified.

51. These restrictions are also justified by the ability of the Government of the Republic to perform its constitutional function. In order to carry out domestic and foreign policy of the state, the Government has the right under § 86 clause 4 and § 103(1) clause 4 of the Constitution to submit draft laws to the Riigikogu. The Government has also drawn attention to the fact that the large number of interpellations submitted and the obligation to respond to them within the constitutionally established time-limit significantly impede the work of the executive. While interpellations are an important instrument of parliamentary scrutiny, the constitutional right to submit them must not become an obstacle to the constitutional duties of the addressees of interpellations. The Constitution presumes mutually respectful cooperation of constitutional institutions in resolving affairs of the state.

52. The fact that, due to the submission of procedural questions and drafts and interpellations, the Riigikogu did not reach to debate the items scheduled on the agenda during the whole working week and the additional sitting, is an indication of obstruction. This is also indicated by the Riigikogu and the Government in their opinions. The Chamber is of the opinion that obstruction as a tool of political struggle and parliamentary work, by which a parliamentary minority obstructs the implementation of the will of the parliamentary majority and the government supported by it, thus exercising its political will, must be tolerated to a certain extent in the activities of the Riigikogu. However, obstruction may not paralyse the work of the Riigikogu to such an extent that the legislator becomes incapable of performing its constitutional duties. This would constitute an abuse of the rights of a parliamentary minority. A minority in the Riigikogu can temporarily hinder the work of the Riigikogu, but not obstruct it indefinitely. If unrestricted obstruction were to be allowed, even a small group of members of the Riigikogu could render the Riigikogu incapacitated. Considering the central place of the Riigikogu in the constitutional organisation of the Estonian state, the long-term incapacity of the Riigikogu to work may paralyse the functioning of the constitutional order.

53. The Chamber is of the opinion that conflicts in the work of the parliament must be resolved primarily by the Riigikogu itself. Ensuring the working capacity of the Riigikogu is the responsibility of all members of the Riigikogu. They are obligated for this under the oath of office (§ 61(2) Constitution). The Chamber emphasises that the parliamentary majority and the Government must also take into account the constitutional requirements of the parliamentary decision-making process while implementing their will. In particular, equal opportunities for members of the Riigikogu to participate in debates, the publicity and transparency of the procedure and sufficient time for a thorough deliberation of drafts and the formation of positions in the Riigikogu must be ensured in order to make informed decisions. The Supreme Court has

previously noted that linking draft legislation to the matter of confidence is permissible if it is used to resolve a deadlock in the relations between the parliament and the government, but its too frequent use may lead to the suppression of parliamentary debate and, along with it, suppression of democracy (Supreme Court *en banc* judgment of 20 October 2020 in case No 5-20-3/43, paras 39.3 and 39.5). Thus, both unlimited obstruction and over-frequent linking of draft legislation to the matter of confidence lead to the suppression of parliament. Both are ultimately a threat to the functioning of the constitutional order.

54. It follows from the foregoing that the Riigikogu resolutions of 15, 16 and 22 May 2023 to discontinue the submission of drafts and interpellations have not violated the rights of the applicants.

55. By relying on § 20¹(2) and § 24(1) clause 2 of the Constitutional Review Court Procedure Act, the Chamber will decline to examine the complaint by members of the Riigikogu against the Riigikogu resolution of 15 May 2023 to discontinue asking procedural questions about the approval of the agenda, and deny the complaint by members of the Riigikogu against the Riigikogu resolutions of 15 and 16 May 2023 to discontinue submission of drafts and interpellations and the complaint by member of the Riigikogu M. Helme against the resolution of 22 May 2023 to discontinue submission of drafts and interpellations.

(signed digitally)

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