constitutional-judgment-5-23-37

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	5-23-37
Date of judgment	2 November 2023
Judicial panel	Chair: Nele Siitam; members: Heiki Loot, Kaupo Paal, Juha Volens
Case	Complaint by 17 members of the Riigikogu against Riigikog and 18 September 2023.
Participants in proceedings and persons involved in proceedings	The applicants members of the Riigikogu Arvo Aller, Rain L Kalle Grünthal, Helle-Moonika Helme, Mart Helme, Martin Kingo, Rene Kokk, Leo Kunnas, Alar Laneman, Siim Pohla Evelin Poolamets, Henn Põlluaas, Jaak Valge and Varro Vo representative attorney-at-law Paul Keres Riigikogu, representatives attorneys-at-law Paul Varul, Triin Šipilov
Manner of examination	Written procedure

OPERATIVE PART

To deny the complaint.

FACTS AND COURSE OF PROCEEDINGS

1. At the Riigikogu sitting on 25 April 2023, the parliamentary group of the Estonian Conservative People's Party (EKRE) submitted a Draft Act on amending the Weapons Act for Riigikogu proceedings. On the same day, the Board of the Riigikogu accepted it for proceedings and the draft was assigned the registration number 19 SE.

2. At the Riigikogu sitting on 8 May 2023, members of the Riigikogu EKRE group submitted the following 23 interpellations.

1) to Prime Minister Kaja Kallas about the uniform Estonian school (interpellation No 13, submitted by: Arvo Aller, Helle-Moonika Helme, Mart Helme, Martin Helme, Kert Kingo, Rene Kokk, Siim Pohlak, Evelin Poolamets, Henn Põlluaas, Jaak Valge);

2) to Minister of Social Protection Signe Riisalo about the activities of Värska Südamekodu OÜ (No 15, submitted by: all 17 members of the EKRE parliamentary group (including Kalle Grünthal); a reply to the interpellation was given on 7 June 2023);

3) to Prime Minister Kaja Kallas about the protection of families (No 17, submitted by: A. Aller, Rain Epler, H-M. Helme, Martin Helme, Alar Laneman, S. Pohlak, Anti Poolamets, J. Valge, Varro Vooglaid; a reply to the interpellation was given on 11 September 2023);

4) to Prime Minister Kaja Kallas about the reduction of family allowances (No 18, submitted by: K. Grünthal, H-M. Helme, K. Kingo, S. Pohlak, H. Põlluaas, J. Valge; a reply to the interpellation was given on 11 September 2023);

5) to Minister of Finance Mart Võrklaev about the absence of impact assessments within the Minister's area of administration (No 19, submitted by: A. Aller, K. Grünthal, H-M. Helme, Martin Helme, A. Laneman, S. Pohlak, H. Põlluaas; a reply to the interpellation was given on 9 October 2023);

6) to Prime Minister Kaja Kallas about funding the broad-based national defence (No 25, submitted by: Ants Frosch, R. Kokk, Leo Kunnas, A. Laneman, H. Põlluaas, J. Valge; a reply to the interpellation was given on 25 September 2023);

7) to Prime Minister Kaja Kallas about implementation of the green transition (No 27, submitted by: A. Aller, R. Epler, H-M. Helme, A. Laneman, A. Poolamets, J. Valge, V. Vooglaid; a reply to the interpellation was given on 25 September 2023);

8) to Prime Minister Kaja Kallas about persons coming to Estonia from Ukraine (No 29, submitted by: R. Epler, H-M. Helme, H. Põlluaas, J. Valge, V. Vooglaid; interpellation returned to the submitters);

9) to Prime Minister Kaja Kallas about new capability developments of military national defence (No 30, submitted by: A. Frosch, R. Kokk, L. Kunnas, A. Laneman, H. Põlluaas, J. Valge; a reply to the interpellation was given on 25 September 2023);

10) to Prime Minister Kaja Kallas about the possibility of return to service of persons dismissed from service due to the vaccination obligation (No 32, submitted by: A. Frosch, K. Grünthal, H-M. Helme, Mart Helme, Martin Helme, A. Poolamets, H. Põlluaas, J. Valge, V. Vooglaid; interpellation returned to the submitters);

11) to Minister of Education and Research Kristina Kallas about the closing of educational institutions (No 42, submitted by: A. Aller, R. Epler, A. Frosch, A. Poolamets; interpellation returned to the submitters);

12) to Minister of Education and Research Kristina Kallas about teaching traditional culture (No 43, submitted by: A. Frosch, H-M. Helme, A. Poolamets, H. Põlluaas; interpellation returned to the submitters);

13) to Minister of Justice Kalle Laanet about possibilities of appeal (No 44, submitted by: K. Kingo, Martin Helme, V. Vooglaid; a reply to the interpellation was given on 24 May 2023);

14) to Minister of the Interior Lauri Läänemets about the removal of the Bronze Soldier monument (No 45, submitted by: A. Aller, H-M. Helme, Mart Helme, Martin Helme, K. Kingo, R. Kokk, S. Pohlak, E. Poolamets, H. Põlluaas, J. Valge; a reply to the interpellation was initially planned for 15 June 2023, a reply was given on 18 September 2023);

15) to Chancellor of Justice Ülle Madise about bundled draft legislation and short involvement deadlines (No 46, submitted by: Martin Helme, S. Pohlak, H. Põlluaas; interpellation returned to the submitters);

16) to Minister of the Interior Lauri Läänemets about the ethnicity of persons coming to Estonia from Ukraine (No 47, submitted by: R. Epler, H-M. Helme, H. Põlluaas, J. Valge, V. Vooglaid; interpellation returned to the submitters);

17) to Prime Minister Kaja Kallas about the planned increased tax burden of the population (No 48, submitted by: A. Aller, H-M. Helme, Martin Helme, L. Kunnas, A. Laneman, E. Poolamets, V. Vooglaid);

18) to Prime Minister Kaja Kallas about the area of responsibility of the Minister for Regional Affairs (No 50, submitted by: A. Aller, R. Epler, R. Kokk, A. Poolamets, E. Poolamets, H. Põlluaas);

19) to Minister of Culture Heidy Purga about 100 000 euros allocated by the previous Minister of Culture Piret Hartman for the creation of Tähetorni Sports and Health Club (No 51, submitted by: A. Aller, R. Epler, H-M. Helme, A. Laneman, S. Pohlak, A. Poolamets, J. Valge; a reply to the interpellation was given on 18 September 2023);

20) to Minister of Finance Mart Võrklaev about the corporate sustainability reporting directive (No 52, submitted by: R. Epler, H-M. Helme, R. Kokk, E. Poolamets; a reply to the interpellation was given on 9 October 2023);

21) to Prime Minister Kaja Kallas about increasing the indirect fire capability of the wartime Defence Forces (No 72, submitted by: A. Frosch, R. Kokk, L. Kunnas, A. Laneman, H. Põlluaas, J. Valge);

22) to Prime Minister Kaja Kallas about regional development in connection with the planned tax increase (No 73, submitted by: A. Aller, H-M. Helme, Martin Helme, L. Kunnas, A. Laneman, E.

Poolamets, V. Vooglaid);

23) to Minister for Economic Affairs and Information Technology Tiit Riisalo about equal treatment in working life (No 74, submitted by: A. Aller, R. Epler, H-M. Helme, K. Kingo, A. Laneman, J. Valge; a reply to the interpellation was given on 18 September 2023).

3. The President of the Riigikogu forwarded 17 of the above interpellations to their addressees, while six interpellations were returned to the submitters. During the spring session, two of the interpellations were given a reply.

4. Replying to a total of six interpellations was planned for the agenda for the first working week (11–14 September 2023) of the II session of the Riigikogu. Two of the interpellations submitted by the applicants on 8 May 2023 were planned to be on the agenda: interpellations Nos 17 and No 18 (the planned day of replying was 11 September 2023). The agenda in the form submitted by the Board was approved by the Riigikogu at its first sitting on 11 September 2023 with 55 votes in favour, 24 votes against and no abstentions.

5. Replying to a total of six interpellations was planned for the agenda for the second working week (18–14 September 2023) of the II session of the Riigikogu. Three of the interpellations submitted by the applicants on 8 May 2023 were planned to be on the agenda: interpellations Nos 45, 51 and 74. The agenda in the form submitted by the Board was approved by the Riigikogu with one amendment (excluding from the agenda an interpellation not submitted by members of the EKRE group) at its first sitting of the working week on 18 September 2023 with 63 votes in favour, 19 votes against and no abstentions.

6. On 21 September 2023, 17 members of the Riigikogu (hereinafter the applicants) lodged a complaint with the Supreme Court, seeking the following:

1) annulment of the Riigikogu resolution of 11 September 2023 approving the agenda for the first working week of the II session of the Riigikogu plenary assembly;

2) annulment of the Riigikogu resolution of 18 September 2023 approving the agenda for the second working week of the II session of the Riigikogu plenary assembly;

3) alternatively, a declaration of unlawfulness of the said Riigikogu resolutions.

7. On 18 October 2023, the Board of the Riigikogu registered the departure of K. Grünthal from the EKRE parliamentary group.

THE POSITION OF THE APPLICANTS

8. The applicants find that they have standing to contest a Riigikogu resolution approving the agenda for the Riigikogu plenary week if no interpellations have been included on the agenda whose deadline for reply arrives during the same working week.

9. The right to submit interpellations and receive a reply to them falls among the constitutionally protected core aspects of parliamentary democracy and of the mandate of a member of the Riigikogu. The right of interpellation has been expressly laid down by the Constitution of the Republic of Estonia (§ 74(1)). Therefore, a complaint about an alleged violation of the right of interpellation is admissible under § 16 of the Constitutional Review Court Procedure Act (CRCPA).

10. Section 74(2) of the Constitution stipulates that an interpellation must be replied to within 20 sitting days. If this deadline is exceeded, the right of interpellation has been interfered with. In the present case, interference arose from the fact that the Riigikogu approved the agenda for the working week that did not contain replying to interpellations whose deadline for reply was due within the same working week.

11. The contested Riigikogu resolutions are unlawful since they did not enable the applicants to receive replies to their interpellations within the deadline set by the Constitution. Under § 140(2) of the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA), an interpellation is to be included on the agenda for the time agreed with the interpellator and the addressee of the interpellation. This time must fit within the deadline set by § 74(2) of the Constitution (i.e. 20 sitting days). The times for reply proposed by the addressees did fall within that deadline. The Board of the Riigikogu should have included the interpellations on the agenda in accordance with the times proposed by the addressees. Interpellations Nos 19, 25, 27, 30, 45, 48, 50, 51, 52, 73 and 74 were not included on the agenda for reply in accordance with the deadline laid down by § 74(2) of the Constitution. For this reason, by approving the agenda for the second working week of the II session of the Riigikogu plenary assembly, § 74 (2) of the Constitution and § 140(1) of the RRPIRA were violated. Under § 24(1) of the CRCPA, this violation is a basis for annulling the resolutions approving the agenda. The applicants concede that since it is no longer possible to reply to the above interpellations within the constitutionally set deadline, the relevant application might actually consist of a declaration of unlawfulness of the Riigikogu resolutions. The power to annul a Riigikogu resolution set out in § 24(1) clause 1 of the CRCPA also includes a declaration of its unlawfulness.

12. Under § 16 of the CRCPA, the applicants may also contest a Riigikogu resolution approving the agenda if it does not contain the first reading of draft legislation initiated by the applicants' parliamentary group if the deadline stipulated for that reading by the Riigikogu Rules of Procedure and Internal Rules Act is due to expire within the same week.

13. The right of a member of the Riigikogu to submit draft laws arises from § 103(1) clause 1 of the Constitution and is also one of the constitutionally protected core aspects of parliamentary democracy and of the mandate of a member of the Riigikogu. This entitles a member of the Riigikogu to submit a regulatory proposal to the Riigikogu in the form of a draft and request that it be accepted for proceedings and deliberated in accordance with the procedure laid down by the law on the Riigikogu rules of procedure (§ 104(1) Constitution).

14. The fact that the draft law in question was initiated by a parliamentary group does not rule out the applicants' standing under § 16 of the CRCPA. Since a parliamentary group is not a person within the meaning of § 16 of the CRCPA, members of the Riigikogu belonging to that group enjoy standing collectively. The applicants include all the members of the Riigikogu EKRE parliamentary group at the time of lodging the complaint.

15. Under § 97(2) of the RRPIRA, the first reading of a draft must be completed within seven working weeks of the plenary assembly of the Riigikogu following acceptance of the draft for proceedings. The draft in question was accepted for Riigikogu proceedings on 25 April 2023. Thus, the first reading of the draft should have taken place during the second working week (18–21 September 2023) of the II session. However, since the first reading of the draft was not included on the agenda for the second working week of the II session or on the agenda for any earlier working week, approval of the agenda violated § 97(2) of the RRPIRA and consequently § 103(1) clause 1 of the Constitution insofar as it concerns the right to request a debate on the draft in accordance with the procedure laid down by the law on the Riigikogu rules of procedure (§ 104(1) Constitution). Under § 24(1) of the CRCPA, this violation is a basis for annulling the resolution approving the agenda for the second working week of the II session. The applicants concede that since it is no longer possible to carry out the first reading of the draft within the deadline set by the RRPIRA, the relevant application might actually consist of a declaration of unlawfulness of the contested resolution.

16. According to explanations given by the applicants' representative, at the sitting on 8 May 2023 members of the EKRE parliamentary group also submitted interpellation No 71 addressed to Minister of Education and Research Kristina Kallas but which was returned to the submitters. According to information on the Riigikogu website, this interpellation was deemed to have been submitted on 9 May 2023.

OPINION OF THE RIIGIKOGU

17. The Riigikogu requests that examination of the complaint be declined, asserting that the applicants lack standing, However, if the Supreme Court examines the complaint, the complaint should be denied.

18. The applicants lack standing since the issue as to the period within which an interpellation must be replied to and drafts deliberated by the plenary assembly does not concern a core aspect of the mandate of a member of the Riigikogu. Should the Supreme Court accept the existence of standing, it will essentially set out to resolve a political dispute between the majority and the opposition arising from internal relationships

in the Riigikogu. This would contravene the principle of separation of powers.

19. A Riigikogu resolution on approval of the agenda is not a resolution within the meaning of § 65(1) of the Constitution. Thus, it is also not contestable under § 16 of the CRCPA. The resolutions contested in the present case have no effect outside the Riigikogu. A member of the Riigikogu has no subjective right to demand that one or another issue be included on the agenda.

20. And the applicants cannot contest failure to include Draft Act (19 SE) on amending the Weapons Act on the agenda also because the draft was initiated by a parliamentary group and not by the applicants, who are members of the Riigikogu. A parliamentary group has no standing under § 16 of the CRCPA since a group is not a person but a body of the Riigikogu.

21. Satisfying the complaint would not help protect the applicants' rights since sittings have already been held on the basis of the approved agendas and decisions have already been passed at those sittings. Retroactive annulment of all those decisions would be excessive and would inadmissibly harm legal certainty. Nor can the Riigikogu add replying to the interpellations and debating the draft on the agenda retroactively. As regards the applicants' alternative request – a declaration of unlawfulness of the contested resolutions – the applicants have, however, failed to demonstrate a justified interest which is necessary for submitting a claim for declaratory relief.

22. However, if the Supreme Court still examines the complaint, the complaint should be denied. The agenda for the first and second working weeks of the II session of the Riigikogu plenary assembly was approved in a situation where the applicants had clearly abused their right to submit interpellations and drafts. The situation at hand is a continuation of obstruction taking place at the end of the Riigikogu spring session. The applicants have submitted interpellations and drafts with the clear objective of paralysing the work of the Riigikogu. This is indicated both by the number of drafts and interpellations as well as their nature. The applicants have not concealed their objective to obstruct the work of the parliament nor have they agreed to any compromises. Obstruction also continued during the Riigikogu autumn session.

23. The applicants' activities endangered the constitutional order as a whole, not just the working capacity of the Riigikogu. Therefore, it was necessary to take measures to ensure the working capacity of the Riigikogu and performance of its constitutional functions. The gradual inclusion of interpellations and drafts on the plenary agenda, in parallel with other issues, was a balanced and proportional measure to achieve that aim.

24. By the beginning of the II session of the Riigikogu, a situation had developed where all the interpellations and drafts submitted by the opposition could not be processed within the deadline laid down by law. If this had been done, the Riigikogu would not have been able to add other issues to the agenda for several months (second and third readings of drafts, political statements of the Prime Minister and ministers, debates on issues of national importance, etc.). Under § 13(2) clause 18 of the RRPIRA and relying on the right of self-organisation of the Riigikogu, the Board of the Riigikogu proceeded from the following principles when planning agendas:

a) the work of the Riigikogu must be organised so that the Riigikogu can perform all its tasks arising from the Constitution and the laws;

b) members of the Government, the Chancellor of Justice, the Auditor General and other officials who are legally obliged to speak at a plenary session must be able to plan their work;

c) the agenda is planned in a balanced way so as to include replies to interpellations, first, second and third readings of drafts, as well as other issues that the Riigikogu has to discuss;

d) the agenda must include drafts initiated by both the opposition and the coalition (including the Government);

e) 6–8 interpellations are planned for one working week in order to ensure the working capacity of the Riigikogu, the Government and other constitutional institutions;

f) interpellations for which the deadline for reply expires earlier are included on the agenda;

g) as a general rule, interpellations are planned for Monday;

h) the number of interpellations to be answered could be proportional to parliamentary groups;

i) the agenda is drawn up so that all the items scheduled therein can be discussed during the sitting week.

25. The Riigikogu has tried to find a balance between the interests of the majority of the Riigikogu and the interests of the opposition. Most, or nearly 75%, of the time of the sittings during the first and second working weeks of the II session was spent on interpellations and drafts submitted by the opposition.

26. Compliance with the deadlines laid down in the Constitution and the RRPIRA cannot be guaranteed if this would lead to paralysis or severe disruption of the work of the Riigikogu. In such a situation, a balance must be found between the rights of the members of the Riigikogu, on the one hand, and the Riigikogu's capacity for work, on the other. In the present case, the Riigikogu has complied with this requirement. The number of interpellations and drafts to be initiated by a member of the Riigikogu is not limited. If the deadlines laid down by § 74(2) of the Constitution and § 97(2) of the RRPIRA are strictly observed, even a small group of members of the Riigikogu could block the work of the parliament by submitting a large number of interpellations and drafts and demanding their timely processing.

27. Eight of the 11 interpellations at issue were replied to during the first three working weeks (11, 18 and 25 September) of the II session.

OPINION OF THE CHAMBER

28. The applicants dispute that their interpellations were not replied to within 20 sitting days, as laid down by § 74(2) of the Constitution, and that the first reading of Draft Act 19 SE, initiated by the EKRE parliamentary group, did not take place within seven working weeks, as laid down by § 97(2) of the RRPIRA. According to the applicants, their right of interpellation was not violated by the addressees of the interpellations by failing to reply to the interpellations within the deadline, but by the Riigikogu, which did not include replying to the interpellations on the agenda for the plenary working week with the consideration that replying could take place within the constitutionally prescribed deadline. The Chamber will first ascertain whether members of the Riigikogu have standing (I) and then assesses the lawfulness of the contested decisions (II).

I

29. 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. In the judgment in case No 5-21-32, the Supreme Court Constitutional Review Chamber 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). In the same judgment, the Chamber conceded that in certain cases § 16 of the CRCPA also ensures judicial protection in an internal legal relationship 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. Standing can only be affirmed in cases where the complaint alleges that the contested Riigikogu resolution conflicts with one of the rights of a member of the Riigikogu which can be considered as belonging among the constitutionally protected core aspects of the mandate of a member of the Riigikogu (ibid., para. 34). These positions were also followed by the Supreme Court Constitutional Review Chamber in its judgment of 22 June 2023 No 5-23-31/18 (see para 26 et seq. of that judgment). In the case cited, the Supreme Court assessed 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).

30. The Constitution protects both holding and exercising the mandate of a member of the Riigikogu. The exercise of a mandate includes, among other things, the right to initiate laws (§ 103(1) clause 1 Constitution) and the right to submit interpellations (§ 74 Constitution) (cited judgment No 5-23-31/18, para. 27). Since, according to law, a draft and interpellation can only be submitted at a Riigikogu sitting, limiting the time allowed for this 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 (judgment cited above, para. 39). However, the Chamber did not find the right under § 74(2) of the RRPIRA to ask questions about the procedure for conduct of a sitting to fall among the constitutionally protected core aspects of the mandate of a member of the Riigikogu (see ibid., paras 29–32).

31. Under § 74(1) of the Constitution, any member of the Riigikogu may submit interpellations to the Government of the Republic and its members, the Chairman of the Board of the Bank of Estonia, the

President of the Bank of Estonia, the Auditor General and the Chancellor of Justice. In line with the second subsection of the same section, a reply to an interpellation must be given at a Riigikogu sitting within 20 sitting days. The Supreme Court has held that the right of interpellation is not unlimited and the Riigikogu may lay down in a law on the Riigikogu rules of procedure and a law on the Riigikogu internal rules (§ 69 and § 104(2) clause 6 Constitution), among other things, the procedure for submitting and responding to interpellations (judgment No 5-23-31/18, para. 36).

32. The right to submit interpellations includes the right to receive a reply to one's interpellation. This is also expressly laid down by the Constitution whose § 74(2) sets out both the form and deadline for reply to an interpellation. The addressee's duty to reply to an interpellation at a Riigikogu sitting means that a reply must be oral. This ensures simultaneously the public nature of an interpellation and of the reply given to it (see § 72(1) Constitution), as well as the opportunity for members of the Riigikogu to assess the reply. Both are important in particular for exercising effective control of the executive (the Government of the Republic or its members), which is one of the constitutional duties of the Riigikogu. The same objective is also served by the deadline of 20 sitting days for replying to interpellations as laid down by § 74(2) of the Constitution. Being fixed in the Constitution, this is intended first and foremost to ensure that an interpellator receives a reply at a time when the issue raised in the interpellation is topical.

33. Thus, the right of a member of the Riigikogu under § 74(2) of the Constitution to receive a reply to their interpellation at a Riigikogu sitting within 20 sitting days falls among the constitutionally protected aspects of the mandate of a member of the Riigikogu.

34. Since under § 16 of the CRCPA only a Riigikogu resolution can be contested, the Chamber must also check whether the alleged violation of the applicants' right of interpellation is attributable to the Riigikogu.

35. In order to be able to reply to an interpellation at a Riigikogu sitting, it must first be included on the agenda. Under § 53(2) of the RRPIRA, the agenda for the Riigikogu plenary working week is prepared by the Board of the Riigikogu. A reply to an interpellation is included on the agenda on the initiative of the Board of the Riigikogu for the time agreed with the interpellator and the addressee (§ 140(2) RRPIRA). The agenda for an additional Riigikogu sitting is also prepared by the Board of the Riigikogu (§ 53(4) RRPIRA). Both the agenda for a plenary working week and for an additional sitting is approved by the Riigikogu (first sentence of § 55(1) RRPIRA). Without approval of the Riigikogu there is no agenda and the Riigikogu cannot debate substantive issues at its sitting. The agenda prepared by the Board is not binding on the Riigikogu plenary assembly, which may amend the agenda before approving it (§ 55(2) RRPIRA), albeit to a limited extent (see § 54(3) and (4), § 55(3) RRPIRA). The agenda for an extraordinary session is prepared by the presenters of the proposal to convene the session (§ 51(1), § 53(5) RRPIRA) and it is not subject to approval by the Riigikogu (second sentence of § 55(1) RRPIRA). It follows from the foregoing that, in order to reply to an interpellation at a Riigikogu sitting, it is necessary, firstly, for the addressee to be prepared to reply to the interpellation on a specific date, secondly, for the decision of the Board of the Riigikogu to put replying to the interpellation on the agenda, and thirdly, for the Riigikogu to approve the agenda.

36. In the present case, the interpellations mentioned in the complaint were not excluded from the agenda for the first and second working weeks of the II session because the addressees of the interpellations did not express willingness to reply to them. All the officials whom the applicants wished to interpellate informed the Board of the Riigikogu about the dates of reply suitable for them as follows: Prime Minister – 13

September 2023 (interpellations Nos 25, 27, 30, 48, 50 and 73), Minister of Finance – 13 September 2023 (interpellations Nos 19 and 52), Minister of the Interior – 14 June 2023 (interpellation No 45), Minister of Culture – 13 September 2023 (interpellation No 51), Minister of Economic Affairs and Information Technology – 11 September 2023 (interpellation No 74). The interpellations were excluded from the agenda because, first of all, the Board of the Riigikogu did not put interpellations Nos 19, 25, 27, 30, 45, 48, 50, 51, 52, 73 and 74 on the agenda for the first or second working week of the II session in time, and subsequently the Riigikogu approved the agendas prepared by the Board without adding the applicants' interpellations in question on the agenda. Consequently, the Riigikogu (plenary assembly) itself ultimately decided to exclude replying to the applicants' interpellations from the plenary agenda.

37. Since the right to receive a reply to an interpellation belongs among the constitutionally protected aspects of the mandate of a member of the Riigikogu, and replying to the applicants was excluded from the Riigikogu plenary agenda by the Riigikogu resolutions on approval of the agenda for the first and second working weeks of the II session of the Riigikogu, the applicants are entitled to contest these resolutions.

38. Section 103(1) clause 1 of the Constitution lays down the right of a member of the Riigikogu and clause 2 the right of a parliamentary group to initiate laws. The Chamber has previously noted that 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)" (cited judgment No 5-23-31/18, para. 35). The Chamber has also found that submission of a draft – as a prerequisite for its proceedings in the Riigikogu – also forms part of the right to initiate a law. Since, according to law, a draft can only be submitted at a Riigikogu sitting, limiting the time allowed for submission of a draft at a sitting interferes with the right of members of the Riigikogu arising from § 103(1) clause 1 of the Constitution (ibid., para. 39).

39. The right to initiate a law would be meaningless if it were only limited to the right to submit a draft for proceedings in the Riigikogu. This right also includes the right to demand a debate on the draft in the Riigikogu. The Constitution does not lay down more specific requirements for processing a draft law in the Riigikogu. Unlike replying to interpellations, for which the Constitution lays down a deadline, there is no time limit in the Constitution for consideration of draft laws. However, failure to mention deadlines does not mean that the Riigikogu may decide not to arrange a debate at all or delay it indefinitely. The obligation of the Riigikogu to accept a draft law initiated by a member of the Riigikogu or a parliamentary group for a debate within a reasonable time can be inferred from § 103(1) clauses 1 and 2 of the Constitution in conjunction with § 62 of the Constitution.

40. Under § 97(2) of the RRPIRA, the first reading of a draft law must take place within seven working weeks of the Riigikogu following acceptance of the draft for proceedings, This is a specification of the constitutional reasonable time requirement. The applicants allege violation of their right under § 103(1) clauses 1 and 2 of the Constitution, based on the fact that the first reading of Draft Act 19 SE did not take place within deadline. Since the deadline laid down by § 97(2) of the RRPIRA gives substance to the constitutional right that the Riigikogu should consider a draft law within a reasonable time, in the opinion of the Chamber the complaint has been lodged for protection of a core aspect of the mandate of a member of the Riigikogu.

41. The Riigikogu in its opinion notes that Draft Act 19 SE could not be placed on the plenary agenda because the lead committee did not make a proposal for this. Inclusion of a draft on the agenda without a proposal from the lead committee allegedly amounts to a violation of procedural rules. Under § 97(1) of the RRPIRA, a draft is included on the agenda for the first reading on the motion of the lead committee. The RRPIRA does not stipulate how to act if the lead committee fails to make a proposal mentioned in § 97(2) of the RRPIRA. In para. 35 of this judgment, the Chamber concluded that an agenda prepared by the Board is not binding on the plenary assembly and the final decision on the agenda is made by the Riigikogu plenary assembly. And the plenary can also amend the agenda before its approval. In the event of inclusion of a draft on the agenda for the working week, the lead committee as a working body of the Riigikogu is also obliged to make the relevant preparations.

42. Under § 16 of the CRCPA, a Riigikogu resolution may be contested by a person whose rights have allegedly been violated. A parliamentary group is not a person. The Supreme Court has defined a parliamentary group as a political association of members of the Riigikogu which is not formed around a narrow subject area but around a programme based on ideology (Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 25). This means that parliamentary groups belong in the structure of the Riigikogu, being parts of the Riigikogu as the highest state body (see T. Kuusmann. § 71. – U. Lõhmus (editor-in-chief.). Eesti Vabariigi põhiseaduse kommentaarid. [Comments on the Constitution of the Republic of Estonia] Eesti Teaduste Akadeemia Riigiõiguse Sihtkapital. 2023, comments 33 and 34). Although the Constitution refers to the specific rights of parliamentary groups, which are considered separately from the rights of individual members of the Riigikogu (§ 71(3), § 103(1) clause 2 Constitution), ultimately they can be seen as interconnected with the principle of the free mandate laid down by § 62 of the Constitution (see ibid., comment 47 et seq.). It follows from the foregoing that if members of the Riigikogu have decided to exercise a right belonging among the constitutionally protected core aspects of their mandate jointly as a parliamentary group, under § 16 of the CRCPA they may lodge a complaint against a resolution of the Riigikogu even if formally the right of their group was violated.

43. Since the right to process a draft within a reasonable time belongs among the constitutionally protected aspects of the mandate of a member of the Riigikogu, and Draft Act 19 SE was excluded from the agenda for the second working week of the II session of the Riigikogu by the resolution approving the Riigikogu agenda, the applicants are entitled to contest the said resolution.

44. The complaint is admissible in its entirety.

II

45. Next, the Chamber will analyse whether the Riigikogu resolutions approving the agenda for the first and

second working weeks of the II session, which did not include interpellations Nos 19, 25, 27, 30, 45, 48, 50, 51, 52, 73 and 74 or Draft Act 19 SE, violated the applicants' right under § 74(2) of the Constitution to receive replies to their interpellations within 20 sitting days and the right under § 103(1) clauses 1 and 2 to a debate, within a reasonable time, on the draft initiated by them. The Chamber will first deal with the issue of replying to the interpellations in dispute (A) and then the issue of the first reading of Draft Act 19 SE (B). Finally, the Chamber will express an opinion on resolution of the complaint (C).

(A)

46. The applicants handed over the contested interpellations to the chair of the sitting at the Riigikogu sitting on 8 May 2023. The President of the Riigikogu forwarded interpellations Nos 19, 25, 27, 30, 45, 51, 52, 73 and 74 to the addressees on 11 and 12 May 2023. The deadline for reply to these interpellations started to run from the day of the sitting following the date of forwarding, i.e. from 15 May 2023. Interpellations Nos 48 and 50 were forwarded to the addressee on 15 May 2023. Thus, the deadline for reply to these interpellations started to run from 16 May 2023.

47. The deadline for reply to an interpellation is calculated in sitting days. The Constitution does not specify what should be considered as sitting days. The working time of the Riigikogu is laid down by the RRPIRA, which determines the times of regular sittings, i.e. sittings taking place in the frame of regular Riigikogu sessions. During regular sessions, the Riigikogu may also hold additional sittings but these are convened outside the working schedule laid down by the RRPIRA, as need may be. During the time between regular sessions, extraordinary sessions may take place which are also convened in case of need. One of the purposes of a deadline for reply to interpellations is to give the addressee of an interpellation time to prepare a reply and to plan the time for replying. If the days of additional sittings and extraordinary sessions are included in the deadline, the deadline originally set may change and the deadline for reply may move to an earlier time. However, this would create uncertainty for both interpellator and addressee. Therefore, an interpretation is justified, according to which sitting days within the meaning of § 74(2) of the Constitution are to be understood as days of regular sittings predetermined in the working schedule of the Riigikogu.

48. Based on the foregoing, the deadline of 20 sitting days for replying to interpellations Nos 19, 25, 27, 30, 45, 51, 52, 73 and 74 passed on 14 September 2023 and the deadline for replying to interpellations Nos 48 and 50 on 18 September 2023. Thus, the interpellations should have been replied to no later than that sitting day and the interpellations should have been included on the agenda for the first and second working weeks of the II session II respectively.

49. It is apparent from the agendas of the first and second working weeks of the II session of the Riigikogu that they did not include the interpellations in question. The interpellations had not been replied to at the previous sessions of the Riigikogu either. Thus, the Chamber finds that the applicants did not receive replies to their interpellations Nos 19, 25, 27, 30, 45, 48, 50, 51, 52, 73 and 74 within the deadline of 20 sitting days as prescribed by § 74(2) of the Constitution.

50. The provision of § 74(2) of the Constitution must be regarded as a procedural rule (cf. Supreme Court Constitutional Review Chamber judgment of 10 May 2013 in case No 3-4-1-3-13, paras 29 and 30).

However, the fact that the interpellations were not replied to within 20 sitting days cannot in itself lead to the conclusion that the applicants' constitutional right has been violated. In order to ascertain whether a violation took place, the Chamber must assess whether the Riigikogu had compelling reasons exceptionally justifying non-inclusion of replying to the interpellations in question on the Riigikogu agenda. In its opinion, the Riigikogu noted that during the first session of the Riigikogu, opposition groups and their members submitted an extraordinary number of drafts and interpellations. Therefore, it was not possible to meet the deadline set for responding to interpellations without paralysing the work of the Riigikogu or at least significantly disrupting it.

51. In judgment No 5-23-31/18, the Chamber expressed the view that the Riigikogu must organise its work so that it can perform all its tasks arising from the Constitution (para. 50), and that the constitutional right to submit interpellations must not become an obstacle to the constitutional duties of the addressees of interpellations (para. 51). The Chamber is of the opinion that § 74 of the Constitution, which lays down the possibility of submitting an interpellation and the deadline for replying to an interpellation, should not be understood as meaning that interpellations enjoy priority over other tasks of the Riigikogu and over other rights arising from the mandate of a member of the Riigikogu.

52. The obligation to ensure the working capacity of the Riigikogu arises primarily from §§ 59 and 65 of the Constitution, which establish the tasks and competence of the Riigikogu. The working capacity of the Riigikogu is threatened or even paralysed, inter alia, when so many drafts and interpellations are submitted to the Riigikogu that the reasonably organised working time of the Riigikogu is not sufficient to process all of them and perform other tasks assigned to the Riigikogu by the Constitution. At the same time, it must be taken into account that, in line with the principle of democracy, adoption of decisions in the Riigikogu must be preceded by forming of positions, a search for compromises and agreements, hearing experts and interest groups, and a public debate.

53. Section 62 of the Constitution lays down the principle of equal participation of members of the Riigikogu in performing the functions of the Riigikogu (cf. the cited judgment in case No 3-4-1-3-05, para. 16). Under this, members of the Riigikogu are equal in the exercise of their mandate and must be able to participate in the work of the Riigikogu on equal terms. Rights that are part of the mandate of a member of the Riigikogu must be exercised so that it does not harm the opportunities of other members of the Riigikogu to exercise their mandate. If, by abusing their rights, some members of the Riigikogu submit a very large number of drafts and interpellations, they thereby prevent exercise by other members of the Riigikogu of their mandate.

54. The Constitution requires that not only the Riigikogu but also other constitutional institutions should have the capacity to work. The Constitution prescribes the tasks that these institutions must perform (e.g. the Government of the Republic – § 87 of the Constitution, the National Audit Office – § 133 of the Constitution, the Chancellor of Justice – § 139 of the Constitution). First, the work of these institutions may be hindered due to the large number of interpellations which they have to reply to at a Riigikogu sitting. Second, performance of these tasks is endangered if, due to an excessive burden, the Riigikogu is unable to function properly: to process drafts, deal with reviews and reports, respond to proposals, appoint office-holders, etc.

55. Based on paragraphs 50–54 of this judgment, § 74(2) of the Constitution should be understood as

meaning that, as a rule, a member of the Riigikogu must receive a reply to an interpellation at a Riigikogu sitting within 20 sitting days. However, an exception to this rule is permissible in a situation where it is not possible to reply to the interpellation during this period without significantly harming the working capacity of the Riigikogu or other constitutional institutions or the rights of members of the Riigikogu.

56. Next, the Chamber will assess whether the Riigikogu applied the exception referred to in the previous paragraph of this judgment constitutionally by not including interpellations Nos 19, 25, 27, 30, 45, 51, 52, 73 and 74 on the agenda for the first working week and interpellations Nos 48 and 50 on the agenda for the second working week. To that end, the Chamber will take into account the following:

1) the number of drafts and interpellations pending before the Riigikogu by the beginning of the II session, including the relative proportion of drafts and interpellations submitted by the applicants;

2) the estimated time needed to process the drafts and interpellations submitted;

3) the impact on the working capacity of other constitutional institutions;

4) efforts by the Board of the Riigikogu to ensure the timeliness of replies to interpellations;

5) the applicants' conduct in creating and contributing to resolving the situation that has arisen.

57. According to the data provided by the Riigikogu, by the beginning of the II session, proceedings in the Riigikogu were pending on 221 drafts where the deadline for the first reading (§ 97(2) RRPIRA) was due to arrive within the first four working weeks (11–14 September 2023, 18–21 September 2023, 25–28 September 2023, 9–12 October 2023) for 184 drafts, and 317 interpellations where the deadline for reply had already arrived or was due to arrive within the first five working weeks (11–14 September 2023, 18–21 September 2023, 25–28 September 2023, 9–12 October 2023, 16–19 October 2023), and whereof the deadline for reply for 253 interpellations was due to arrive within the third working week (25–28 September 2023).

58. If the Riigikogu plenary agenda had included all the drafts and interpellations that should have been placed on the agenda due to the arrival of a constitutional or statutory deadline, the agenda for the first working week of the II session of the Riigikogu should have included 10 drafts and 49 interpellations, according to the data provided by the Riigikogu, and the agenda for the second working week should have included 6 drafts and 3 interpellations, and the agenda for the third working week should have included 72 drafts and 253 interpellations.

59. In its opinion, the Riigikogu has stated that, based on practice to date, consideration of a draft or interpellation may take approximately an hour. On that basis, it would take approximately 500 hours for all submitted drafts and interpellations to be deliberated at a Riigikogu sitting. Considering the time of the Riigikogu sittings according to the working time schedule of the Riigikogu (see § 47 RRPIRA), it would take a total of six to seven months to respond to interpellations and carry out the first readings of drafts pending by the beginning of the II session alone. At the same time, it must be taken into account that new drafts and interpellations will be submitted for Riigikogu proceedings, and other issues must also be placed on the Riigikogu agenda, including those expressly laid down by the Constitution.

60. If one were to take the calculations of the Riigikogu as a basis, 59 hours would have been spent during the first working week of the II session on interpellations and drafts for which the deadline for replying or for a debate arrived during that working week. At the same time, the maximum working time of the plenary assembly according to the working time schedule of the Riigikogu (except for question time and the possibility of extending the sitting time) is 35 hours, including nights. In fact, 22 questions were included on the agenda for the first working week, and the Riigikogu sittings for debating them lasted for a total of 21 hours and 49 minutes. In the second working week, the interpellations and drafts in question would presumably have taken 9 hours. The agenda for that working week included 28 questions, and the sittings lasted for a total of 19 hours and 8 minutes. The situation that had developed in the Riigikogu is best illustrated by the number of drafts and interpellations where the deadline for processing them was due to arrive in the third working week – a total of 325. When planning the agenda, it must be taken into account that if it is not possible to deliberate all the items scheduled on the agenda for one working week, issues not deliberated are automatically transferred to the agenda for the next working week (§ 53(3) RRPIRA). It should also be borne in mind that the duration of deliberating items on the agenda is only a forecast, since it is not possible to determine precisely in advance the time required to deal with one item on the basis of the RRPIRA. In addition, as also pointed out by the Riigikogu, the Riigikogu must include on the agenda other issues than just interpellations and the first readings of drafts.

61. The above figures (see paras 57 to 60) show that the number of drafts and interpellations pending before the Riigikogu at the beginning of the II session was unusually large, and their processing alone would have occupied the Riigikogu regular sittings for a long time. When assessing the situation as a whole, the Chamber notes that if the Riigikogu had observed all the procedural deadlines its working capacity could have been significantly harmed.

62. As stated above, it is also necessary to assess the impact of the number of interpellations on the working capacity of their addressees. The majority of the interpellations in dispute, as well as other interpellations, were addressed to members of the Government of the Republic. Already in the opinion in case No. 5-23-31 the Government of the Republic pointed out that a large number of interpellations submitted at the first session within a short period prevents the Government from performing its constitutional functions (see para. 22 of the judgment in the case cited). The Chamber finds that although the Government and its members are accountable to the Riigikogu, the organisation of parliamentary scrutiny over the executive must enable ministers to fulfil their constitutional role. In case No. 5-23-31, the Chamber noted that submission of interpellations must not become an obstacle to the constitutional duties of the addressees of interpellations and that the Constitution presumes mutually respectful cooperation among constitutional institutions in resolving affairs of state (see para. 51). In a situation where replying to interpellations alone takes up a large part of the working time of members of the Government, this principle has not been adhered to. In addition, it carries the risk of undermining the quality and credibility of mechanisms of democratic control.

63. Next, the Chamber will assess efforts by the Board of the Riigikogu in ensuring the timeliness of replying to interpellations and whether the interpellations specified in the complaint could have been replied to before the start of the II session.

64. In its opinion, the Riigikogu has expressed the view that, with such a number of interpellations and drafts, it is not possible to comply with the procedural deadlines arising from the Constitution and the RRPIRA. The opinion also indicates that the Board developed the principles based on which agendas have been planned (see para. 24 of this judgment). Under § 69 of the Constitution, the task of the President and Vice-Presidents of the Riigikogu is to organise the work of the Riigikogu in accordance with a law on Riigikogu rules of procedure and a law on Riigikogu internal rules. It follows from this provision, among other things, that the President and Vice-Presidents who, according to the RRPIRA, form the Board of the Riigikogu, are set to plan the work of the Riigikogu in order to ensure smooth organisation of the work of the parliament. The extensive margin of appreciation and discretion of the Riigikogu in organisational and procedural matters of its work (see judgment No 5-21-32/8, para. 40) also extends to preparation of agendas for Riigikogu sittings. In the opinion of the Chamber, in the case in dispute, the Board of the Riigikogu found a balance between the different rights and values when preparing the agenda and did not go beyond the limits of the right of self-organisation laid down for the Riigikogu by the Constitution.

65. By the time of the present judgment, eight of the interpellations set out in the complaint have been replied to at a Riigikogu sitting. Interpellations Nos 45, 51 and 74 were replied to on 18 September 2023, interpellations Nos 25, 27 and 30 were replied to on 25 September 2023 and interpellations Nos 19 and 52 were replied to on 9 October 2023. This shows that although the interpellations were replied to with some delay, the delay is not significant considering the number of issues pending before the Riigikogu.

66. Between sessions I and II, two extraordinary sessions were convened – on 19 and 20 June 2023. No replies to interpellations were given at either of them. No extraordinary sessions were held in July, August or September.

67. However, the opinion of the Riigikogu refers to the Board’s attempts to find time for replying to the

applicants' interpellations outside the regular sittings and sessions of the Riigikogu. According to the submissions of the Riigikogu to the Supreme Court, proposals to convene an additional Riigikogu sitting on 19 May 2023 and extraordinary sessions before the start of the II session in order to reply to interpellations were not supported by parliamentary groups. Under § 68 of the Constitution, convening an extraordinary session presumes a proposal by the President of the Republic, the Government of the Republic or at least one-fifth of the members of the Riigikogu (i.e. at least 21 members of the Riigikogu). According to the second sentence of § 70 of the Constitution, at an extraordinary session the Riigikogu is competent to act if more than one half of the members are in attendance (i.e. at least 51 members of the Riigikogu). Without the support of the members of other parliamentary groups, the applicants would not have been able to make a proposal to convene an extraordinary session or ensure the quorum necessary for the competence of the Riigikogu to act. However, the applicants have not referred to their own efforts to convene extraordinary sessions to deal with their interpellations.

68. A total of 243 interpellations were submitted by members of the EKRE group during the first session. The EKRE group or its members also submitted a total of 136 draft laws or resolutions during the same period. From 8 to 16 May 2023, a total of 189 drafts were submitted for Riigikogu proceedings, of which 102 (54%) were submitted by the EKRE group. A total of 509 interpellations were submitted during the same period, of which 197 (39%) were by the applicants. The handover of drafts and interpellations during the fourth working week (8-11 May 2023) of session I, and at an additional sitting convened after it for 12 May 2023, were assessed by the Chamber as amounting to obstruction in its judgment No 5-23-31/18 of 22 June 2023 (para. 52).

69. In the light of the foregoing, the Chamber finds that the Riigikogu resolutions approving the agenda for the first and second working weeks of the II session did not violate the applicants' right of interpellation. In the opinion of the Chamber, in the present case, failure to include replying to interpellations on the agenda was justified for compelling reasons: ensuring the working capacity of the Riigikogu and other constitutional institutions and of the rights of other members of the Riigikogu.

(B)

70. Draft Act 19 SE was submitted by the EKRE group on 25 April 2023 and was accepted for proceedings on the same day, thus in the third working week of session I. After the third working week, session I had five more working weeks: three in May and two in June. The seventh working week, counting from acceptance of Draft Act 19 SE for proceedings, was therefore the second working week of session II.

71. Draft Act 19 SE was not on the agenda for the second working week of the II session of the Riigikogu. Nor did the first reading of the draft take place beforehand. Consequently, the draft in question was not deliberated within the seven-week deadline prescribed by § 97(2) of the RRPIRA.

72. Under § 104(1) of the Constitution, the procedure for adopting laws is to be laid down by a law on the Riigikogu rules of procedure. The procedure for adopting laws includes the procedure for deliberating a draft law and forming a position on it. These are issues relating to the internal organisation and procedure for exercising the competence of the Riigikogu, thus being covered by the right of self-organisation of the Riigikogu (see the cited judgment in case No 3-4-1-3-05, para. 42).

However, when establishing the procedure for processing a draft law, the Riigikogu must keep in mind the conditions arising from the Constitution, including the requirement arising from § 103(1) clauses 1 and 2 of the Constitution, according to which draft laws initiated by members of the Riigikogu and parliamentary groups must be deliberated within a reasonable time. As noted by the Chamber above (para. 40), the deadline laid down in § 97(2) of the RRPIRA is a specification of this constitutional requirement.

73. The Chamber finds that failure to hold the first reading of Draft Act 19 SE during the seven working weeks of the Riigikogu, as laid down by § 97(2) of the RRPIRA, did not violate the applicants' right under § 103(1) clauses 1 and 2 of the Constitution, since the Riigikogu had compelling constitutional reasons for not placing the draft on the agenda.

74. Above, the Chamber assessed the timeliness of replying to the applicants' interpellations and analysed the situation that had developed in the Riigikogu due to the unusually large number of drafts and interpellations. The Chamber came to the conclusion that, since replying to all the interpellations within the deadline laid down by § 74(2) of the Constitution would significantly harm the working capacity of the Riigikogu and other constitutional institutions and the rights of other members of the Riigikogu, the applicants' constitutional right of interpellation has not been violated. In the opinion of the Chamber, the same reasons also justified non-inclusion of the first reading of Draft Act 19 SE on the agenda for the second working week of the II session. Consequently, the applicants' constitutional right to have a draft law initiated by their parliamentary group deliberated in the Riigikogu within a reasonable time has not been violated.

(C)

75. Relying on § 24(1) clause 2 of the CRCPA, the Chamber denies the complaint of the members of the Riigikogu against the Riigikogu resolution of 11 September 2023 to approve the agenda for the first working week of the II session and the Riigikogu resolution of 18 September 2023 to approve the agenda for the second working week of the II session.

(signed digitally)
