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	5-21-32
Date of judgment	23 December 2021
Judicial panel	Chair Ivo Pilving, members Velmar Brett, Ants Kull, Heiki Loot and Urmas Volens
Case	Complaint by Riigikogu member Priit Sibul against the Riigikogu resolution of 9 November 2021 on conducting sittings of the Riigikogu via remote participation
Examination of the case	Written procedure
Participants in the proceedings	Riigikogu member Priit Sibul Riigikogu

OPERATIVE PART

1. To satisfy the complaint.
2. To declare unlawful the Riigikogu resolution of 9 November 2021 on conducting sittings of the Riigikogu via remote participation.

FACTS AND COURSE OF PROCEEDINGS

1. On 8 November 2021, the Riigikogu's Estonian Reform Party group submitted a proposal to the Riigikogu Board to hold the plenary sittings of the 6th session of the XIV Riigikogu composition from 9 to 26 November 2021 via remote participation.

2. The text of the proposal was as follows: "The prevalence of the COVID-19 virus is high in Estonia and the Government has asked all employers to implement teleworking wherever possible. While the level of vaccination of Riigikogu staff and members is high, the parliament sets an example for other institutions and companies through its behaviour. We also have the experience of successfully implementing teleworking. In that light, the Reform Party group proposes that the work of the Riigikogu from 9 to 26 November 2021 be carried out in the form of remote sittings."

3. The Riigikogu Board discussed the proposal at its meeting on 9 November 2021, but did not reach a consensus on it. Taking into account that it is not immediately possible to convert a same-day sitting into a sitting via remote participation, and that the current work cycle was to last until 25 November, the Riigikogu Board decided – on the basis of § 16(4) of the Riigikogu Rules of Procedure and Internal Rules Act (RRPIRA) – to put the question whether to hold plenary sittings via remote participation in the period from 10 to 25 November 2021 to a vote at the plenary Riigikogu sitting on 9 November, i.e. on the same day.

4. At the plenary sitting on 9 November 2021, the Riigikogu discussed the issue of conducting sittings via remote participation and decided to hold the plenary Riigikogu sittings from 10 to 25 November 2021 via remote participation. Sixty-two Riigikogu members voted in favour of the proposal and 23 voted against.

5. On 18 November 2021, Riigikogu member Priit Sibul (hereinafter also 'the applicant') filed a complaint with the Supreme Court against the Riigikogu resolution of 9 November 2021. The applicant seeks annulment of the Riigikogu resolution.

THE POSITION OF THE APPLICANT

6. The applicant asserts that the contested resolution violated his rights because the Riigikogu decided to hold remote sittings without compelling reasons. The applicant's rights are also violated by the decision to switch to remote sittings without compelling reasons from the day following adoption of the resolution.

7. The decision to convert the Riigikogu sittings to a remote participation format violates the rights of the applicant as a Riigikogu member who voted against the resolution. The work of the Riigikogu presupposes that sittings are held directly as it also involves, for example, holding political negotiations, debates, and a search for compromises even outside the chamber or across committees. In the form of teleworking, a Riigikogu member cannot perform these tasks as effectively as in the normal course of business. The right that is violated is the right of a Riigikogu member to participate in the work of the Riigikogu in the chamber at Toompea Palace in Tallinn, together with others involved in the proceedings, including other Riigikogu members, members of the Government, the Chair of the Supervisory Board of the Bank of Estonia, the Governor of the Bank of Estonia, the Auditor General, and the Chancellor of Justice. This right may be interfered with by use of a remote sitting only if compelling reasons exist for doing so for a legitimate purpose, namely the effective functioning of the parliament. The right of the applicant – which is violated by giving shorter advance notice of the remote sitting than prescribed by law – is the right to reorganise one's work in good time for participation in a remote sitting.

8. The condition laid down in § 89^1(1) of the RRPIRA, according to which the Riigikogu Board may decide to hold a sitting by remote participation only if compelling reasons exist, also applies if the relevant decision is made by the Riigikogu plenary assembly on the basis of § 16(4) of the RRPIRA. The Riigikogu's right of self-organisation is not absolute and does not include the right to violate the rules established in the exercise of the right of self-organisation. Court intervention is justified if the majority of the parliament takes a procedural decision by which it manifestly abuses its position.

9. According to the explanatory memorandum to the Draft Act providing for remote sittings, holding a remote sitting is justified by objective impediments that do not allow the Riigikogu to hold a regular sitting, for example, a situation where a large number of Riigikogu members are in quarantine due to an infectious disease and cannot physically attend the sitting. What is to be considered a compelling reason is specified in the "Requirements and procedure for holding a Riigikogu sitting by remote participation". According to clause 2 of this resolution, a compelling reason is first and foremost a situation where at least one-fifth of the Riigikogu members or at least one parliamentary group cannot come to the venue of a Riigikogu sitting due to an objectively justified impediment or where physically assembling the Riigikogu would endanger the continuity of the Riigikogu.

10. The Riigikogu decided to hold remote sittings for reasons that cannot be considered compelling within the meaning of § 89^1(1) of the RRPIRA. The justifications concerning the recommendation of

the Government of the Republic, setting an example and previous experience of teleworking, are not related to objective impediments to holding a sitting that involves the physical presence of Riigikogu members. Nor can the epidemiological situation be considered an objective impediment. An objective impediment related to the epidemiological situation would be a situation where a large number of Riigikogu members are in quarantine due to an infectious disease. The majority of the Riigikogu members have been vaccinated, so that physical assembly poses no threat to the continuity of the Riigikogu. Under conditions of high vaccination coverage, the usual organisation of work in the Riigikogu as a body performing an important democratic function should not be changed.

11. Implementing a remote sitting always entails a risk of failures related to electronic means. Section 89^1(5) of the RRPIRA also lays down a procedure in a situation where an impediment arises in holding a remote sitting. Such risks do not exist in the case of ordinary sittings. The effective functioning of the parliament is best ensured by the conduct of sittings in the normal way.

12. Nor did compelling reasons exist for shortening the notice period for a remote sitting. Under § 89^1(7) of the RRPIRA, Riigikogu members must be given at least three days' notice of a remote sitting, a period that may be shortened only if compelling reasons exist for doing so. In the present case, the remote sitting was implemented from the following day. At present, there were no circumstances that would have prevented holding ordinary sittings for at least another three days.

13. In response to the Supreme Court's questions for clarification, the applicant noted that although the Riigikogu Chancellery must ensure the technical conditions for conducting a remote sitting in accordance with clause 17.4 of the Riigikogu Board resolution on the "Requirements and procedure for holding a Riigikogu sitting by remote participation", in some cases during the period at issue the speech of a Riigikogu member was inaudible, an oral question could not be submitted, the image froze and an interpellation to a member of the Government of the Republic was delayed due to technical failures.

OPINION OF THE RIIGIKOGU

14. The applicant has contested the resolution of the Riigikogu plenary assembly concerning its working arrangements and holding plenary sittings by way of remote participation. This is not a Riigikogu resolution within the meaning of § 16 of the Constitutional Review Court Procedure Act (CRCPA), since that provision implies resolution of an important and complex constitutional issue, i.e. a resolution within the meaning of § 65(1) of the Constitution. Therefore, a contestable Riigikogu resolution in this regard means a legislative act adopted on the basis of the Constitution or a law as a separate Riigikogu legislative act titled "Resolution of the Riigikogu".

15. A resolution appealed against on the basis of § 16 of the CRCPA must have external effect, i.e. it must be directed at or have an effect on persons outside the Riigikogu, and it can be contested by persons whose subjective rights are violated by the resolution. The contested resolution does not have an effect outside the Riigikogu. It concerns the matter of resolving an internal, organisational Riigikogu issue which is addressed to the Riigikogu itself.

16. The Supreme Court has distinguished between concepts designated by the terms 'procedural resolution' and 'substantive resolution'. Procedural resolutions are those that are formed as a result of voting in the course of Riigikogu proceedings, are recorded in the transcript of the plenary assembly and for which no separate legislative act is drawn up. The contested resolution is a procedural resolution that cannot be contested under § 16 of the CRCPA.

17. The scope of judicial review in Riigikogu procedural matters is limited. According to the principle of the parliament's right of self-organisation, the legislator enjoys a relatively wide freedom of decision in matters concerning its own activities and is generally entitled to determine the internal organisation and procedure for the exercise of its powers. The decision on whether to hold Riigikogu plenary sittings remotely or in the chamber is also a matter of organisation of the internal functioning of the Riigikogu and fits within the frame of the Riigikogu's right of self-organisation as an institution. Proceeding from the principle of separation of powers, the court's ability to assess the justification for the parliament's internal working arrangements is limited. The court's intervention is appropriate in cases where the working arrangements affect the rights and duties of persons outside the parliament or where a clear violation of someone's subjective rights exists. Parliamentary autonomy, i.e. the right of self-organisation, has also been recognised by the European Court of Human Rights (ECtHR).

18. Under § 16 of the CRCPA, only a Riigikogu resolution which violates someone's rights may be contested. As the contested resolution allegedly violates the applicant's rights as a member of the Riigikogu, the complaint has not been filed for protection of the applicant's subjective rights, but for protection of the rights arising from the status of a Riigikogu member. Disagreements arising between Riigikogu members on issues of organisation of work, procedure, and the like are resolved in accordance with the procedure laid down by the RRPIRA. As no consensus on the contested issue was found among the Riigikogu Board, the plenary assembly decided to resolve it by vote. Riigikogu members who are in the minority at the time of voting must respect the decision of the majority. This is a resolution that does not directly concern the rights of a specific Riigikogu member, but the rights of all Riigikogu members equally, which is why a Riigikogu member has no right to contest such a resolution.

19. Organising a plenary Riigikogu sitting via remote participation does not deprive a Riigikogu member of the right to participate in the sitting directly. Nor are the rights of a Riigikogu member more limited when a sitting is held remotely as compared to a sitting which cannot be attended electronically without physical presence at the sitting. Even if the existence of interference were to be admitted, its impact on the rights arising from the status of a Riigikogu member would be marginal.

20. The Riigikogu itself is competent to decide on the existence of compelling reasons set out in § 89^1(1) of the RRPIRA. The majority of the Riigikogu voting in favour of remote Riigikogu sittings considered this to be sufficiently justified.

21. In response to the Supreme Court's questions for clarification, the Riigikogu noted that, as of 12 October 2021, vaccination coverage in the Riigikogu was over 90% (Riigikogu members and Chancellery employees combined). In order to prevent the spread of the virus, the Riigikogu has given the heads of structural units the right to implement teleworking in their units, and wearing a mask while in the Riigikogu is recommended. Committee chairs decide on the working format of committees. Visitors to the Riigikogu have been asked to present a COVID certificate and, if they do not have one, to wear a mask while at the Riigikogu.

22. Since the amendments to the RRPIRA which created the possibility for a plenary Riigikogu sitting to be conducted in the form of remote participation, remote sittings have already been implemented repeatedly. At the same time, Riigikogu members have had the opportunity to choose whether to participate in a sitting from a distance electronically or to come to the Riigikogu chamber. A total of 99 out of 101 Riigikogu members, as well as most ministers and some invitees, have participated in remote sittings that have taken place so far. Occasional audio and video interruptions have occurred at sittings, but the quality of sound and image depends on the quality of the internet connection of

Riigikogu members at home. Similar technical glitches may occur in the case of a regular sitting, e.g. if the voting console on the desk of a Riigikogu member does not work.

23. By now, the legal effect of the Riigikogu resolution has passed due to expiry of the time-limit. Once a resolution has expired and ceased to have effect, seeking its annulment is meaningless. Satisfaction of the complaint is unfounded.

24. The second Vice-President of the Riigikogu submitted a dissenting opinion to the opinion of the Riigikogu.

25. The possibilities for Riigikogu members to apply for constitutional review in the Supreme Court are unjustifiably narrow. In the interests of legal clarity and actual right of appeal, the possibility to contest Riigikogu resolutions should be wider.

26. The Riigikogu Board did not achieve consensus on the issue of switching to teleworking, as not all its members found that compelling reasons for this existed. The Riigikogu established its own rules on when switching to teleworking is justified, and violated the norm it had established itself. In order to switch to teleworking, either 1/5 of the Riigikogu members would have had to be unable to participate in the work or one parliamentary group would have had to be completely incapacitated for work. No such situation existed or even a situation close to it.

27. Although annulment of the resolution is no longer necessary at the time of making a court decision, legal clarity is still necessary as to the discretion of the Riigikogu Board and the plenary assembly in defining compelling reasons, including whether the existence of a compelling reason can be decided by majority vote in the future.

OPINION OF THE CHAMBER

28. The dispute in the case is whether the Riigikogu could decide to hold its sittings remotely between 10 and 25 November 2021. The Chamber will first determine whether a Riigikogu member enjoys standing in such a dispute (I). Thereafter, the Chamber will assess the lawfulness of the contested resolution (II) and explain the legal effect of the Supreme Court judgment (III).

I

29. Under § 89^1(1) of the RRPIRA, in the presence of compelling reasons the Riigikogu Board may decide to hold a sitting by remote participation. A sitting by remote participation means a Riigikogu sitting in which members can participate electronically without being physically present at the sitting (§ 89^1(2) RRPIRA). Under § 16(4) of the RRPIRA, a Riigikogu Board resolution is passed by consensus of the members present. Where no consensus is reached, a Riigikogu Board member may put the issue to the vote at a Riigikogu sitting without including it on the agenda. Indeed, the present case involves a situation where no consensus was reached at the meeting of the Riigikogu Board on 9 November 2021 on the issue of allowing remote sittings of the Riigikogu, and a member of the Riigikogu Board put the issue to a vote at the plenary Riigikogu sitting on the same day, i.e. 9 November 2021.

30. Section 16 of the Constitutional Review Court Procedure Act lays down a procedure for contesting a Riigikogu resolution, under which any person who finds that their rights have been violated by a Riigikogu resolution may file a petition with the Supreme Court to annul that resolution. Section 17 of the CRCPA regulates the filing of a complaint against a Riigikogu Board resolution, laying down that any member, alternate member or parliamentary group of the Riigikogu who finds that their rights

have been violated by a Riigikogu resolution listed in § 13(2) clauses 2, 2^1, 3 or 4 of the RRPIRA or in §§ 13 or 14 of the Status of Members of the Riigikogu Act may file a petition with the Supreme Court to annul that resolution.

31. The rights protected under § 16 of the CRCPA should be mostly understood as the rights of individuals against the state in an external legal relationship, first and foremost fundamental rights. On the other hand, § 17 of the CRCPA lays down a closed list of instances where a Riigikogu member may contest a Riigikogu Board resolution in an internal legal relationship. At the same time, the Supreme Court has previously regarded §§ 16 and 17 of the CRCPA as provisions that allow a Riigikogu member to have recourse to the Supreme Court in order to resolve a dispute arising from an internal relationship (Supreme Court Administrative Law Chamber order of 12 March 2019 No 3-17-2784/20, para. 11).

32. Also in the opinion of the Constitutional Review Chamber it would be difficult to find justification for a set of norms that would ensure judicial protection for a Riigikogu member in an internal relationship against the Board, but not in an equivalent situation where the rights of a Riigikogu member are allegedly violated by a resolution of the Riigikogu plenary assembly. Nor does the legal standing of a Riigikogu member under § 16 of the CRCPA depend on the form of the Riigikogu resolution or on whether the Riigikogu adopts the resolution according to the agenda or outside the agenda.

33. Although the Convention for the Protection of Human Rights and Fundamental Freedoms does not require the possibility to resolve disputes arising from the internal organisation of parliamentary work in court, it does not follow, as the Riigikogu claims, that such a possibility would be contrary to the Convention. The ECtHR has held that parliament is entitled to regulate its internal affairs without interference from other branches of government, but only on condition that this is done within the framework established by the Constitution (see e.g. ECtHR Grand Chamber judgment of 17 May 2016 in case No 42461/13, *Karàcsony and Others v. Hungary*, para. 142). It must also be borne in mind that a Riigikogu resolution is not promulgated by the President of the Republic, nor can its lawfulness as legislation of specific application be reviewed by the Chancellor of Justice.

34. The Chamber emphasises that § 17 of the CRCPA, similarly to § 16, does not ensure standing for protection of any and all rights of a Riigikogu member laid down by the RRPIRA. Nor can a Riigikogu member under any circumstances contest laws passed by the Riigikogu. However, the question whether the Riigikogu convenes physically or remotely is not merely formal or procedural, but concerns the constitutionally protected core aspects of parliamentary democracy and of the mandate of a Riigikogu member. If the Riigikogu adopts a resolution on an issue of such importance, a Riigikogu member has the right, arising from § 16 of the CRCPA, to initiate a dispute arising from an internal relationship in the Supreme Court.

35. In the present case, legal standing arises from the right of a Riigikogu member to directly exercise their mandate, which can be derived both from the principle of parliamentary democracy arising from § 65 of the Constitution as well as from the principle of a free mandate contained in § 62 of the Constitution. Although the substance of the latter, as understood in the classical sense, above all protects the right of a Riigikogu member to vote and decide according to their conscience and principles, the Chamber is of the opinion that the principle of a free mandate would become meaningless if a Riigikogu member could not effectively exercise their mandate. However, the principle of parliamentary democracy requires that essential national issues be decided under conditions of free parliamentary debate. These principles create the right for a Riigikogu member to demand a direct debate at a Riigikogu sitting, even though due to its internal nature it is not a

fundamental right or a right within the meaning of § 15 of the Constitution (Supreme Court Administrative Law Chamber order of 12 March 2019 No 3-17-284/20, para. 10).

36. The fact that the Constitution requires that the mandate of a Riigikogu member be exercised as directly as possible is also supported by other provisions of the Constitution. For example, the second sentence of § 70 of the Constitution stipulates that Riigikogu members must be "present" at a Riigikogu sitting, and § 109 of the Constitution also lays down an emergency solution for situations where the Riigikogu cannot "convene". In both cases, the historical constitutional legislator has undoubtedly had in mind physical presence in the room where the Riigikogu sitting is usually held. Until 2020, the RRPIRA and its predecessors have always provided that Riigikogu sittings are held in the chamber of Toompea Palace in Tallinn, unless for compelling reasons the Riigikogu President designates a different venue for the sitting.

37. As a general rule, any communication is more effective the more directly it takes place. This is even more so in the case of the parliament, the etymology of the term itself emphasising oral communication between representatives of the people. Even if technical capacity exists to organise the work of the Riigikogu in the form of a remote sitting, this does not mean that communication in this way between representatives of the people would be as effective as direct debates in the chamber or in the parliamentary corridors of the Riigikogu. Moreover, the Riigikogu performs the function of oversight of the executive and other constitutional institutions, which, according to § 74 of the Constitution, is expressed, among other things, in the right to submit interpellations to the Government of the Republic and its members, the Chairman of the Supervisory Board of the Bank of Estonia, the Governor of the Bank of Estonia, the Auditor General, and the Chancellor of Justice. In the opinion of the Chamber, the more directly the oversight function is performed the more effective it is.

38. Since the Constitution requires that parliamentary democracy and the mandate received from the people be exercised as directly as possible, holding a remote sitting concerns the core aspects of the mandate of a Riigikogu member. Therefore, the complaint by P. Sibul is admissible.

II

39. Section 65 clause 16 of the Constitution in conjunction with the principle of separation of powers gives rise to the Riigikogu's right of self-organisation (see Supreme Court Constitutional Review Chamber judgment of 2 May 2005 in case No 3-4-1-3-05, para. 42). However, this is not absolute, but is limited by other constitutional values, including those relating to the parliament, such as the functioning of the Riigikogu. Thus, for example, the Riigikogu cannot dissolve itself by invoking the right of self-organisation, because the parliament is prescribed by the Constitution and the principle of parliamentary democracy enshrined in it. Similarly, the right of self-organisation may be restricted by other constitutional values, such as in the present case the principle of direct exercise of the mandate of a Riigikogu member. Nor can the right of self-organisation be invoked to deprive Riigikogu members of the basic procedural rights related to exercise of their mandate.

40. The right of self-organisation entails an extensive margin of appreciation and discretion of the Riigikogu in organisational and procedural matters of the Riigikogu's work. The margin of appreciation also includes defining undefined legal concepts, including the concept of "compelling reasons" used in § 89^1(1) of the RRPIRA. As a rule, judicial review is limited to obvious errors in the exercise of the parliament's right of self-organisation, including in defining undefined legal concepts. However, this presupposes that the Riigikogu members have been ensured sufficient information and an opportunity for substantive debate.

41. In line with 89^1(1) of the RRPIRA, the Riigikogu Board may decide to hold a sitting by remote participation if compelling reasons exist. If the Riigikogu Board fails to reach consensus on this issue, a Riigikogu Board member may, under § 16(4) of the RRPIRA, put the issue to a vote at a Riigikogu sitting without including it on the agenda.

42. Section 16(4) of the RRPIRA does not prescribe a procedure for deliberating matters not on the agenda put to the vote by a member of the Board. It cannot be concluded from this that the law precludes any substantive debate on these issues. This is not merely a question for an explanation of the procedure for conducting a sitting (§ 74(2) RRPIRA), i.e. a so-called procedural question, but a matter to be voted on by the Riigikogu. Section 13(2) clause 18 of the RRPIRA gives the Riigikogu Board the competence to decide on procedural issues not regulated by this Act or any other Act.

43. The remote holding of Riigikogu sittings was debated at the Riigikogu sitting on 9 November 2021 before proceeding to the agenda, i.e. outside the agenda. It appears from the transcript that the chair of the sitting repeatedly dismissed attempts by Riigikogu members to open a substantive debate on the reasons for the remote sitting, calling on the Riigikogu members only to vote. It is true that, in order for the Riigikogu groups to be able to convene and form their opinions, the chair proposed that the Riigikogu members be granted a chair's recess on the basis of § 65 of the RRPIRA. Finally, it appears from the transcript of the plenary Riigikogu sitting of 9 November 2021 that one political group in the Riigikogu requested a recess before the vote to formulate the position of the group on the basis of § 83(2) of the RRPIRA, and such a recess was granted.

44. The Chamber is of the opinion that if a Riigikogu plenary is deciding the issue whether the Riigikogu should hold its sittings remotely for compelling reasons, and the situation is not urgent, substantive debate of the issue should be ensured before it is put to the vote, given the importance of the issue. In the present case, the chair of the sitting refused to open substantive debate, the relevant questions of Riigikogu members were not answered, and not the slightest analysis was undertaken of the potential danger posed by a physical gathering of the Riigikogu. Therefore, in adjudicating the matter, the Chamber cannot confine itself to checking obvious errors.

45. Although the Chamber is of the opinion that the requirement to exercise the mandate of a Riigikogu member as directly as possible is a principle that may be restricted in order to ensure the functioning of the Riigikogu, this may be done only in cases of absolute necessity. For example, holding Riigikogu sittings remotely may be a measure that is more sustainable for parliamentary democracy than decrees issued by the President of the Republic (§ 109 Constitution). However, the conditions for deviating from the requirement of exercising the mandate of a Riigikogu member as directly as possible must be strict and limited to situations where the Riigikogu really cannot convene physically. Such an impediment cannot mean just any risk or difficulty involved in the gathering of members of the Riigikogu in a physical space. Abuse of the remote sitting format to reduce the opposition's influence in debating important drafts must be excluded, as must manipulation, in order to ensure the possibility of voting for those who are absent without a compelling reason.

46. Thus, when interpreting the undefined legal concept of "compelling reasons" set out in § 89^1(1) of the RRPIRA, the Riigikogu had to keep in mind that the Constitution does not allow it to organise remote sittings easily. Moreover, the Chamber is of the opinion that, in the case of a constitutionally-conforming interpretation, a compelling reason for holding a remote sitting can be a situation that does not indeed allow the Riigikogu to convene physically.

47. The Reform Party group, which on 8 November 2021 submitted a proposal to the Riigikogu Board to hold the plenary sittings of the 6th session of the XIV Riigikogu from 9 to 26 November 2021 via

remote participation, justified this primarily on the grounds of the high prevalence of the COVID-19 virus. The second reason cited in the proposal was the need for the parliament to set an example for other institutions and companies in a situation where the Government of the Republic had asked all Estonian employers to implement teleworking wherever possible. When the issue was debated in the Riigikogu on 9 November 2021, reference was also made to the need to protect Riigikogu members belonging to risk groups as well as their families.

48. The Chamber shares the view that the epidemiological situation in Estonia on 8 November 2021 was worrying. Data from the Health Board show that, on that date, the number of infected people in Estonia in the preceding 14 days was 1691 per 100 000 inhabitants (https://www.terviseamet.ee/et/koroonaviirus/koroonaviiruse-andmestik), while according to a report by the European Centre for Disease Prevention and Control, the European average for week 45 (which ended on 14 November 2021) was 485.5 (https://covid19-surveillance-report.ecdc.europa.eu/archive-COVID19-reports/index.html).

49. However, the high overall infection rate alone at the time of adoption of the contested resolution could not justify allowing teleworking to the Riigikogu as the legislative body of the state. In the opinion of the Chamber, members of the Riigikogu as the representative body of the people are comparable to military service personnel, medical professionals, police officers and other so-called frontline workers in the case of whom an objective need exists to be physically present at work. While in the case of these groups this objective need arises from the nature of the vital services they provide, in the case of the Riigikogu it is due to the role of the Riigikogu in parliamentary democracy. The role of the Riigikogu in resolving important societal issues is particularly important in a crisis situation, which the prevailing epidemiological situation at the time can undoubtedly considered to be.

50. Consequently, the parliament should not be an example to other bodies – whether public, private or not-for-profit – in allowing teleworking, but should, by virtue of its special constitutional role, be among the last, not the first, to switch to teleworking. It is also significant that the period in question coincided with consideration of the 2022 state budget in the Riigikogu. Making budgetary choices is one of the core functions of the Riigikogu (§ 115 Constitution).

51. It is not disputed that the majority of the Riigikogu members (according to the materials of the case, more than 90% of the Riigikogu members and the employees of the Riigikogu Chancellery, who are considered a single group for the purposes of immunisation statistics) have been vaccinated. The risk of severe illness in the event of being vaccinated or having recovered from the disease is not great. While it is true that the effectiveness of vaccines decreases over time, this is primarily true from the point of view of preventing infection in general. According to current knowledge, vaccines are effective in preventing severe illness (see Supreme Court Administrative Law Chamber order of 25 November 2021 in case No 3-21-2241/11 with further references), whereas protection can be restored with a booster dose. In conditions of universal availability of vaccines, the constitutional justification for other anti-virus measures is diminishing ever more.

52. The Chamber acknowledges that restricting the principle of direct exercise of a mandate may, in principle, be justified by the need to protect the health of Riigikogu members belonging to risk groups as well as their next of kin even under conditions of high vaccination coverage, but measures other than implementation of remote sittings of the Riigikogu must also be considered in order to achieve this objective. Remote participation by Riigikogu members belonging to risk groups, those having contraindications to vaccination, those having been in close contact and, of course, infected Riigikogu members, as well as Riigikogu members whose next of kin belong to these groups, could be justified. In order to protect these people, it is not necessary to allow teleworking for all Riigikogu members. It

is also possible to keep a distance, disperse the Riigikogu members in the chamber, improve ventilation, and the like. On the other hand, enabling teleworking for members of the Riigikogu as a representative body of the people as a measure of general application could only be considered as an *ultima ratio* measure. Riigikogu members were not provided with an analysis of the extent of risk of serious illness that would be entailed in a physical gathering of Riigikogu members during the period at issue and whether this risk could not be sufficiently mitigated by other means.

53. In the light of the objectives discussed, it is also telling that in the conditions of the current wave of the coronavirus, the Riigikogu has not – probably rightly – considered it necessary to protect the health of people through restrictions precluding the gathering of crowds comparable to a sitting of the Riigikogu or even larger numbers of people.

54. Taking into account the constitutional principles of representative democracy and direct exercise of the mandate of a Riigikogu member, the Chamber finds that the reasons relied on by the Riigikogu in applying § 89^1(1) of the RRPIRA were not sufficiently compelling to justify teleworking in the Riigikogu. The Riigikogu resolution of 9 November 2021 is unlawful.

III

55. The Chamber notes that even though the period of validity of the contested Riigikogu resolution has expired by now, this does not prevent substantive review of the case. The power to annul a Riigikogu resolution, laid down by § 24(1) clause 1 of the CRCPA, also includes the power to declare a resolution unlawful. In the present case, retroactive annulment of the resolution would be manifestly excessive and would disproportionately undermine legal certainty. Consequently, this judgment does not affect the lawfulness or validity of laws and resolutions adopted during remote Riigikogu sittings during the period at issue, i.e. from 10 to 25 November 2021.

(signed digitally)