

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 5 February 1998**

Review of the petition of the President of the Republic of 30 December 1997 to declare the Language Act and the State Fees Act Amendment Act unconstitutional.

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Rait Maruste and composed of the members of the Chamber Tõnu Anton, Lea Kalm, Jaano Odar and Jüri Pöld, at its session of 22 January 1998, in the presence of the representative of the President of the Republic Mall Gramberg and the representative of the Riigikogu Lauri Vahtre, and the secretary to the Chamber Piret Lehemets, reviewed the petition of the President of the Republic of 30 December 1997.

From the documents submitted to the Constitutional Review Chamber **it appears that:**

On 19 November 1997 the Riigikogu had passed the Language Act and the State Fees Act Amendment Act; by his resolution no. 238 of 4 December 1997 the President of the Republic did not promulgate the Act and instead referred it back to the Riigikogu for new consideration and decision. The President was of the opinion that the Act was in conflict with §§ 4, 10 and 11 of the Constitution.

On 18 December 1997 the Riigikogu once again adopted the Language Act and the State Fees Act Amendment Act, unamended, and on 30 December 1997 the President of the Republic, on the basis of § 107(2) of the Constitution, addressed the Supreme Court and proposed that the Court declare the Language Act and the State Fees Act Amendment Act unconstitutional. In the petition submitted to the Supreme Court the President of the Republic argues that § 1(1) the Act by which § 5 of the Language Act was amended, is in conflict with the Constitution.

The President of the Republic is of the opinion that the new wording of § 5(1) of the Language Act, delegating to the Government of the Republic the right to establish the description of the standard for the command of the Estonian language by a member of the Riigikogu and a member of a local government council, gives the executive power a disproportionately wide authority and, in conjunction with § 5(3) of the Language Act, allows the executive power to assess and check the standard of the command of language by members of the Riigikogu and local government councils who have already been elected. With regard to members of the Riigikogu it is not in conformity with the principle of separation and balance of powers provided for in § 4 of the Constitution.

The President of the Republic argued that the new wording of § 5(2) of the Language Act - establishing requirements for the command of the Estonian by employees of commercial undertakings, non-profit associations or foundations, and by sole proprietors, in work-related dealings with private persons, as well as foreign experts and foreign specialists, - is too general and as such allows the Government of the Republic to impose restrictions and duties on the referred persons. Pursuant to § 11 of the Constitution restrictions can be imposed only in accordance with the Constitution and they must be necessary in a democratic society. Pursuant to § 10 of the Constitution duties that are not set out in the Constitution must arise from the spirit of the Constitution or be in accordance therewith, and conform to the principles of a state based on the rule of law.

The extensive powers given to the Government of the Republic by § 5 of the Language Act neither conform to the principles of a state based on the rule of law nor guarantee legal certainty, as they are incomprehensible to persons and make it impossible for them to foresee and to take into account the regulations to be issued on the basis of that norm.

Proceeding from the above and pursuant to § 19(14) of the Constitutional Review Court Procedure Act, the President of the Republic is seeking that the Language Act and the State Fees Act Amendment Act, passed by the Riigikogu on 18 December 1997, be declared unconstitutional.

The representative of the Riigikogu argued at the court session that the Language Act and the State Fees Act Amendment Act was not in conflict with the Constitution.

The Chancellor of Justice submitted his written opinion arguing that the petition of the President of the Republic was to be satisfied.

Having examined the materials submitted and having given a fair hearing to the representatives of the President of the Republic and the Riigikogu, **the Constitutional Review Chamber found that:**

I. That which the President of the Republic contested concerns the following persons:

A. Members of the representative bodies:

1. members of the Riigikogu,
2. members of local government councils.

B. Employees of commercial undertakings, non-profit associations or foundations, and sole proprietors, in work-related dealings with private persons.

C. Foreign experts and foreign specialists.

The contested legislation is related to:

1. constitutional justification to establish requirements for the command of language in general,
2. competence of establishing requirements for the command of language.

II. Pursuant to the preamble of the Constitution one of the goals of the state is to guarantee the preservation of the Estonian nation and culture throughout the ages. The Estonian language is an essential component of the Estonian nation and culture; the preservation of the Estonian nation and culture without it is impossible.

For the achievement of the goal a general provision of the Constitution, namely § 6, establishes that the official language of Estonia is Estonian. On the basis of the aforesaid § 52(1) of the Constitution stipulates that the official language of state agencies and local governments shall be Estonian. Pursuant to § 51(1) of the Constitution everyone has the right to address state agencies, local governments, and their officials in Estonian and to receive responses in Estonian.

The referred provisions are elements of Estonian constitutional order and Estonian citizens are to observe these (§ 54(1) of the Constitution). Also, citizens of foreign states and stateless persons who are in Estonia have a duty to observe the constitutional order of Estonia (§ 55).

It is obvious from the aforesaid that the protection and use of the Estonian language are established as constitutional goals and the state power is to secure the achievement of the goal. Thus, the steps to ensure the use of the Estonian language are constitutionally justified.

§ 1 of the Constitution declares that Estonia is a democratic republic. Democracy fulfils its purpose when it is functioning. One of the conditions for a functioning democracy is that the persons who exercise power have comprehensive understanding of what is going on in Estonia and use a single sign system in public administration. Thus, the requirement that the Estonian language be used in representative democracy and public administration is in conformity with general interests and justified in the historically developed circumstances.

III. Pursuant to the contested Act the members of the Riigikogu are required to have the command of the Estonian language conforming to the standard to be established by the Government of the Republic. Through this prescription the Government of the Republic is given the right to decide on the required standard of the command of the language. In addition, pursuant to § 5(3) of the Language Act the authority to assess the command of the language is given to the examination committees, the composition of which is to be approved by the Minister of Education.

The President of the Republic contested § 1(1) of the Language Act and the State Fees Act Amendment Act on the ground that it delegates to the Government of the Republic the right to establish the description of the standard for the command of the Estonian language and gives the executive power through the examination committees the authority to assess and check the command of language by members of the Riigikogu who have already been elected. Such delegation is not in conformity with the principle of separate and balanced powers provided for in § 4 of the Constitution.

With regard to representative bodies the requirement for the command of Estonian is related with the electoral rights. In the given context §§ 6 and 52(1) of the Constitution can be viewed as electoral qualification which affects the right to stand as a candidate.

§ 26(12)(1) of the Riigikogu Election Act places on every candidate the duty to confirm in writing that he or she is sufficiently proficient in Estonian to participate in the work of the Riigikogu. According to § 28(5)(4) of the same Act the candidate may be excluded from the list of candidates if it is established that the proficiency of the candidate in Estonian does not meet the requirements arising from the Language Act. It is important to point out that the legislator requires that the requirements for the command of Estonian by the members of the Riigikogu be established by law.

According to § 104(2) the Acts concerning elections are among the laws which may be passed only by a majority of the membership of the Riigikogu. To decide on the electoral rights and to establish the conditions for elections are the competencies of the legislative power which may not be delegated to the executive power. The Government of the Republic issues regulations on the basis of and for the implementation of law, and the resolutions of the executive power must not establish the exercise of the electoral rights. To do this would mean to ignore the principle of separate powers.

The establishment by the Government of the Republic of the description of the standard for the command of the Estonian language by a member of the Riigikogu means that the government determines the standard of the command of Estonian by a people's representative. Such requirements may only be established by the Riigikogu Election Act. The Riigikogu Election Act is the only law to regulate matters related to the Riigikogu elections. It is illogical and contrary to the spirit of the Constitution that the Riigikogu Election Act regulates the organisational and technical issues of elections, but does not deal with the essence of the electoral qualification. This conclusion is supported by the fact that the specific requirements for the command of Estonian by those who apply for the Estonian citizenship are established by the Citizenship Act, which is also one of the laws set out in § 104(2) of the Constitution. Thus, only the Riigikogu Election Act may establish the standard for the command of the Estonian language by a member of the Riigikogu.

On the above grounds § 1(1) of the Language Act and the State Fees Act Amendment Act, amending § 5(1) of the Language Act, is in conflict with §§ 4, 87(6) and 104(2)2) of the Constitution.

IV. It is not directly evident from the petition of the President of the Republic, with which provision of the Constitution he considers the establishment by the Government of the Republic of the description of the standard for the command of the Estonian language by a member of the local government council to be in conflict. The President has only referred to the fact that such prescription gives the executive power a disproportionately wide authority to decide on the command of language by members of local government councils.

The Chamber considers it necessary to point out that Article 8 of the European Charter on Local Governments establishes that any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance of their activities with the law and with constitutional principles. Supervision shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

§ 156 of the Constitution establishes electoral qualifications on the right to vote but does not regulate the local government council members' right to stand as a candidate.

According to § 3(3) of the Local Government Council Election Act any person who is proficient in Estonian pursuant to the level provided for in the Language Act may stand as a candidate for a member of the local government council. § 26(7)1) of the same Act contains the requirement that a candidate must confirm in writing that he or she is proficient in Estonian at least at the level provided for in § 5(1) of the Language Act.

Thus, the requirements for the command of Estonian by the members of local government councils must also be established by legislation at the level of law. The aforesaid illustrates the express will of the legislator that the requirements for or the level of the command of Estonian must be established by law and this duty may not be delegated to the executive power, i.e. to the Government of the Republic.

Pursuant to § 104(2)4) of the Constitution the Local Government Council Election Act is a constitutional law. It is unconstitutional to regulate by simple laws the relations which belong to the sphere subject to regulation by constitutional laws. Constitutional laws may not contain either the norms referring to ordinary laws, or norms delegating authority to the executive to issue legislation of general application concerning the issues which essentially belong to the sphere of regulation by constitutional laws. Consequently, it is possible to establish requirements for the command of the Estonian language only by the Local Government Council Election Act.

Thus, § 1(1) of the Language Act and the State Fees Act Amendment Act, amending § 5(1) of the Language Act with regard to the members of local government councils, is in conflict with §§ 87(6) and 104(2)4) of the Constitution.

V. § 1(1) of the contested Act also amended § 5(2) of the Language Act. The former provision stipulates that the Government of the Republic shall establish the requirements for the command of Estonian by public servants, employees of commercial undertakings, non-profit associations or foundations, and sole proprietors in work-related dealings with private persons, as well as foreign experts and foreign specialists.

The petition of the President of the Republic does not contest the establishment by a regulation of the Government of the Republic of requirements for the command of Estonian by public servants.

With regard to the requirements for the command of Estonian by employees of commercial undertakings, non-profit associations or foundations, and sole proprietors in work-related dealings with private persons, as well as foreign experts and foreign specialists, the President of the Republic argued that the wording was too general and allowed the Government of the Republic to arbitrarily place restrictions and duties on persons. The President of the Republic is of the opinion that the disputed Act is in conflict with §§ 10 and

11 of the Constitution. The petition does not specifically explain the essence of the conflict. President states in his petition that establishment of requirements for the command of Estonian by the referred category of employees is not necessary in a democratic society, but he does not justify the statement.

In essence the President of the Republic argues that the ambiguous norm delegating authority itself, i.e. the fact that the content, aim and extent of the delegation have not been specified, gives rise to the unconstitutionality of the norm delegating authority.

If the legislator's delegation is general, but is not in direct conflict with the Constitution, then the assumption or possibility that the government activities may be unconstitutional when observing this delegation, does not in itself make the delegation unconstitutional. When issuing norms under such delegation, the Government of the Republic is to observe the Constitution and interpret both the law and the delegation norm in conformity with the Constitution. That is why the fact that ambiguous delegation may enable the government to establish requirements which are not necessary in a democratic society, does not make the delegation itself unconstitutional.

At the same time the Chamber admits that ambiguous authority undermines general legal certainty and creates a danger of affecting the state-building principles and every person's rights and freedoms established by the Constitution. A norm delegating authority must clearly state the aim, content and extent of the delegation of the right to issue regulations, so that everyone could understand, which administrative acts are allowed to be issued. This principle was underlined by the Constitutional Review Chamber of the Supreme Court already in its judgment of 20 December 1996.

The disputed wording "in work-related dealings with private persons" of § 5(2) of the Language Act is correct, because by this wording the requirements for the command of Estonian to be established by the regulation of the Government of the Republic are tied to the requirement that it should be necessary in work-related dealings with private persons. The fact, whether the Government of the Republic - when establishing requirements for the command of Estonian - has exceeded the authority given to it by the amendment of law, can be decided on after the government has established the requirements for the command of Estonian by its regulation.

The Chamber considers it necessary to underline that the new wording of § 5(2) of the Language Act may infringe the exercise of constitutional rights and freedoms. That is why the restrictions imposed on the basis of the Language Act must be proportional and necessary in a democratic society.

VI. It proceeds from the wording "the procedure for establishing special requirements for the command of Estonian by foreign experts and foreign specialists shall be established by the Government of the Republic", that the Government of the Republic will have to authorise an agency to establish for foreign experts and foreign specialists special requirements (different requirements for the command of Estonian), different from those established by the regulation of the Government of the Republic. Such delegation is not in conformity with the principle that the powers of state shall be exercised legally, stipulated in § 3 of the Constitution, because the delegation presupposes that rules not conforming to the regulation of the Government of the Republic may be imposed by legislation of general application raking lower than regulations of the Government of the Republic.

On the basis of the aforesaid, and proceeding from § 152 (2) of the Constitution and § 19(1)4) of the Constitutional Review Court Procedure Act, **the Constitutional Review Chamber has decided:**

To declare the Language Act and the State Fees Act Amendment Act unconstitutional.

The judgment is effective from the date of its pronouncement, is final and is not subject to further appeal.

Rait Maruste

Chairman of the Constitutional Review Chamber