

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT**

No. of the case	3-4-1-20-02
Date of judgment	15 November 2002
Composition of court	Chairman Lea Kivi, members Ants Kull and Jüri Põld
Court case	Complaint of Olev Tomson requesting that an act of the Tõrva City Electoral Committee be declared unlawful
Basis of the proceeding	Complaint of Olev Tomson
Type of proceeding	Written proceeding
Decision	To dismiss the complaint of Olev Tomson

FACTS AND COURSE OF PROCEEDING

1. On 29 October 2002 Olev Tomson, a member of the Tõrva City Council, submitted a complaint to the Valga County Electoral Committee. The complainant is of the opinion that pursuant to § 6(1) and § 2(1) of the Public Service Act a city official is a person elected or appointed to an office on the staff of an agency which is financed from the city budget and the function of which is to exercise public authority. On the basis of this the following members of the City Council are officials: A. Kabrits, the head of City Maintenance Agency, subordinated to the Tõrva City Government; E. Truu, head of kindergarten "Tõrvalill", subordinated to the Tõrva City Government; I. Hanvere, employee of the Tõrva Upper Secondary School, subordinated to the Tõrva City Government; U. Saks, head of kindergarten "Mõmmik", subordinated to the Tõrva City Government. The complainant also argues that it is necessary to give an interpretation to which agencies exercise public authority and which do not, and he is of the opinion that a kindergarten does not exercise public authority but an upper secondary school and a city maintenance agency do. That is why A. Kabrits and I. Hanvere are to be regarded as city officials and their activities have to be terminated on the basis of § 18(1)6 of the Local Government Organisation Act. The city electoral committee did not appoint alternate members to replace these two members of the council, and thus violated §§ 20(4) and 18(1)6 of the Local Government Organisation Act. The complainant asked that the act of the Tõrva City Electoral Committee, which consisted in the failure to appoint alternate members, be declared illegal and a precept be issued to the city electoral committee to eliminate the violation of law.

2. The Valga County Electoral Committee dismissed the complaint by its decision no. 5 of 1 November 2002. The county electoral committee found that the complainant was correct in finding that the heads of kindergartens, subordinated to (administered by) the Tõrva City Government, are not officials and the Public Service Act is not applicable to them, at the same time the complainant overestimates the authority of the heads of the Upper Secondary School and the City Maintenance Agency. Pursuant to law all heads of agencies administered by the City Government have equal status.

3. On 4 November 2002 O. Tomson submitted a complaint to the National Electoral Committee, requesting it to annul decision no. 5 of the Valga County Electoral Committee of 1 November 2002; to declare illegal the act of the Tõrva City Electoral Committee, which consisted in failure to appoint alternate members; and to issue a precept to the Tõrva City Electoral Committee to eliminate the violation of law. The complainant argues that his question about what amounts to exercising public authority has not been answered. Upon examining the complaint the county electoral committee has proceeded from § 2(3) of the Public Service Act, whereas the provision determines the local government administrative agencies in which employment is considered to be public service, but does not give the definition of an official. Pursuant to § 2(1) of the Public Service Act, the Tõrva Upper Secondary School and the Tõrva City Maintenance Agency are, by all means, administrative agencies which exercise public authority, the former on the basis of the Education Act and the latter has to supervise the observance of city property maintenance rules.

4. The National Electoral Committee dismissed the complaint of O. Tomson by its decision no. 48 of 5 November 2002. The National Electoral Committee motivated its decision as follows:

1) Pursuant to § 18(2)6 of the Local Government Organisation Act the authority of a council member terminates prematurely due to the appointment of the council member as a local government official of the same rural municipality or city. Local government service in rural municipality and city administrative agencies is regulated by the Act concerning public service and the Local Government Organisation Act (§ 54(1) of the Local Government Organisation Act). § 2(3) of the Public Service Act enumerates the local government administrative agencies in which employment is considered to be public service. The complainant argues that the provision does not give a definition of an official, yet the Public Service Act defines the concept of public service (§ 1(1)), the concept of public servant (§ 4(1)), as well as the concept of official (§ 6(1)) precisely through employment in a state or a local government administrative agency. These are the principles that a rural municipality or city electoral committee has to observe upon implementation of § 18(2)6 of the Local Government Organisation Act.

5. O. Tomson submitted a complaint to the Supreme Court, requesting that the act of the Tõrva City Electoral Committee, which consists in the failure to appoint alternate members, be declared unlawful, and that the Supreme Court oblige the Tõrva City Electoral Committee to appoint alternate members to replace the city officials in the council. He also requested that the court annul the decisions of the county electoral committee and of the National Electoral Committee concerning the present matter. The Supreme Court received the complaint on 13 November 2002.

JUSTIFICATIONS OF PARTICIPANTS IN THE SUPREME COURT

6. In his complaint submitted to the Supreme Court O. Tomson states the following:

1) Electoral committees proceeded from § 2(3) of the Public Service act and are of the opinion that officials are only those persons who are employed in the administrative agencies enumerated in the provision. Such interpretation is not based on the law - the concept of an administrative agency is very broad and all agencies which exercise public authority and are financed from the local government budget are administrative agencies. § 2(3) of the Public service Act differentiates among administrative agencies those agencies, in which employment is considered to be public service. This provision does not speak of the concept of official, the purpose of the provision is different.

2) § 4(1) of the Public Service Act provides the definition of a public servant. Pursuant to the provision a public servant is a person who performs remunerative work in an administrative agency. Public servant is a person working in any administrative agency, because it has not been indicated that public servants are only those persons who work in administrative agencies enumerated in § 2(3) of the Public Service Act. Officials form a category of public servants (§ 5), and § 6(1) of the Public Service Act gives a definition of an official, which is based, once again, on the definition of an administrative agency. Here, too, it is not indicated that officials are only those persons who work in the administrative agencies enumerated in § 2(3) of the Public Service Act.

3) Pursuant to § 54(1) of the Local Government Organisation Act, the Tõrva Upper Secondary School and the Tõrva City Maintenance Agency, subordinated to the city government, are administrative agencies and the heads thereof I. Hanvere and A. Kabrits are officials, who exercise public authority. The head of the upper secondary school exercises public authority on the basis of the Education Act and the head of the city maintenance agency must supervise the observance of city property maintenance rules.

4) It is logical to conclude that upon establishing § 18(1)6) of the Local Government Organisation Act the legislator wished to avoid a situation where the majority of a council would consist of persons whose work is remunerated by the city, which would be a fertile ground for the growth of corruption.

7. In its explanations submitted to the Supreme Court the National Electoral Committee contests the complaint of O. Tomson, sticks to its decision and requests the court that it dismiss the complaint of O. Tomson.

OPINION OF THE CONSTITUTIONAL REVIEW CHAMBER

8. § 37(1) of the Constitutional Review Court Procedure Act provides the following: "A political party, election coalition or a person who finds that his or her rights have been violated by a decision or act of an electoral committee, may submit a request to the Supreme Court to annul a the decision of the electoral committee or to declare an act of the electoral committee unlawful and to declare the voting results in a polling division, electoral district, rural municipality, city, county or state invalid.

This establishes the principle that in the Supreme Court it is possible to protect one's subjective rights in electoral matters. A complaint is to be satisfied if a decision or an act of an electoral committee violates subjective rights of a person.

9. The Local Government Council Election Act is also based on the principle that an electoral complaint is to protect subjective rights.

"If an individual, a candidate, election coalition or political party (hereinafter "interested person") finds that his or her rights are violated by an act of a division committee or by a decision or an act of a rural municipality or city electoral committee, he or she may submit a complain to county electoral committee (§ 64(1) of the Local Government Council Election Act). "If an interested person finds that a decision or an act of the county electoral committee violates his or her rights, he or she may submit a complaint to the National Electoral Committee. A person, whose complaint referred to in § 64(1) of this Act, was dismissed by a county electoral committee, may submit a complaint to the National Electoral Committee" (§ 65(1) of the Local Government Council Election Act). "If an interested person finds that an act of a division committee, decision or act of rural municipality or city electoral committee, decision or act of a county electoral committee or decision or act of the National Electoral Committee violates his or her rights, the person may submit a complaint to the Supreme Court, pursuant to the procedure established in the Constitutional Review Court Procedure Act (RT I 2002, 29, 174)" (§ 66(1) of the Local Government Council Election Act).

10. In the present case a member of the Tõrva City Council has disputed the mandate of two members of the city council - I. Hanvere and A. Kabrits - and the electoral committees have heard the complain on the merits. The Constitutional Review Chamber is of the opinion that the disputed act of the Tõrva City Electoral Committee was not directed at O. Tomson ant thus could not violate his subjective rights. That is why, on the basis of §§ 64(1) and 65(1) of the Local Government Council Election Act, the electoral committees should have dismissed the complaint of O. Tomson, without analysing the arguments submitted therein.

The Supreme Court dismisses the complaint of O. Tomson, because the court is of the opinion that an act of the Tõrva City Electoral Committee can not violate the rights of O. Tomson.

11. Nevertheless, the Chamber considers it necessary to point out that the content of the complaint of O. Tomson is without basis, too. The electoral committees have correctly found that the heads of the upper secondary school and of city maintenance agency are not officials of local government.