

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 4 November 1998**

Review of the petition of the Harju County Court to declare § 3(3) and § 26(7)1) of the Local Government Council Election Act, § 5(1) of the Language Act, and the Government of the Republic Regulation no. 188 entitled “Enactment of the description of the level of proficiency in Estonian necessary to work in the Riigikogu and local government councils” partly invalid.

The Constitutional Review Chamber sitting in a panel presided over by the Chairman of the Chamber Jaano Odar and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Ants Kull and Jüri Põld, at its session of 21 October 1998, in the presence of the secretary to the Chamber Piret Lehemets reviewed the petition of the Harju County Court of 4 September 1998.

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

By its resolution no. 15 of 25 October 1996 the Maardu city electoral committee registered the members of the council elected in Maardu city electoral district no. 1 pursuant to the Appendix to the resolution. On 25 June 1997 the National Electoral Committee filed a protest with the administrative judge of Maardu County Court applying for the annulment of the referred resolution of the Maardu city electoral committee with regard to registration of Juri Šutenko, for the reason that he is not proficient in Estonian on the required level.

During the examination of the protest the court pointed out that the language requirements for the members of local government councils are established by the Local Government Council Election Act, the Language Act and the Government of the Republic Regulation no. 188 of 16 July 1996 entitled “Enactment of the description of the level of proficiency in Estonian necessary to work in the Riigikogu and local government councils”. Pursuant to § 3(3) of the Local Government Council Election Act a person who is proficient in Estonian at the level provided for in the Language Act may stand as a candidate for a member of a local government council. § 26(7)1) of the same Act establishes 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. The Language Act, though, does not specify this level, instead it requires that the members of local government councils be proficient in Estonian at the level the description of which shall be provided by the Government of the Republic. The court argued that by this provision the required level of proficiency in Estonian was given to the Government of the Republic to determine.

The court also argued that with regard to local government councils the language requirement pertains to the council members' right to stand as a candidate, in regard to which the Constitution establishes no qualifications. Thus, the requirements of the level of language proficiency for local government council members must be established by law. Considering the fact that pursuant to § 104(2)4) of the Constitution the Local Government Council Election Act is a constitutional Act, it is not allowed in this Act to make references to simple laws or to delegate to the executive power the right to decide issues pertaining to the sphere of regulation by constitutional laws. As the decision-making on issues pertaining to right to vote and determination of conditions for elections belong to the competence of the legislator, it is only possible to establish language proficiency requirements by the Local Government Council Election Act.

On the basis of the aforesaid the Harju County Court decided to dismiss the protest of the National Electoral Committee, and due to the conflict with §§ 4, 87(6) and 104(2)4) of the Constitution, did not to apply the following:

1. §§ 3(3) and 26(7)1) of the Local Government Council Election Act to the extent that these establish the requirement of proficiency in Estonian for a candidate for a member of a local government council at the level provided for in the Language Act;
2. § 5(1) of the Language Act to the extent that it delegates the Government of the Republic the right to establish the procedure for establishing the level of proficiency in Estonian required for working in a local government council;
3. The Government of the Republic Regulation no. 188 of 16 July 1996, to the extent that it describes the level of proficiency in Estonian necessary for working in a local government council.

The Harju County Court is requesting that the Supreme Court annul the referred provisions to the extent specified in the petition.

It appears from the opinion of the chairman of the Riigikogu, sent to the Supreme Court, that language requirements for members of local government councils should be established by the Local Government Council Election Act, and that the delegation norm provided for in § 5(1) of the Language Act should be annulled.

Pursuant to the opinion of the Chancellor of Justice, submitted to the Supreme Court, the language requirement established by § 3(3) and § 26(1)1) of the Local Government Council Election Act is in conformity with the Constitution, as this requirement proceeds from §§ 6, 52(1) and 156(1) of the Constitution in their conjunction. The reference to the Language Act included in §§ 3(3) and 26(7)1) of the election Act is unconstitutional.

Pursuant to the opinion of the Minister of Justice all electoral qualifications must be established by electoral acts, and thus the fact that language requirements are provided for by an ordinary law or that the establishment of language proficiency level is delegated to the Government of Republic, is in conflict with the Constitution.

Having examined the submitted materials **the Constitutional Review Chamber found that:**

I.

§ 3(3) of the Local Government Council Election Act determines the general right to vote and establishes, *inter alia*, that a person who is proficient in Estonian at the level provided for in the Language Act, may stand as a candidate for a member of a local government council. Pursuant to § 26(7)1) of the same Act, upon presentation for registration of a candidate the standard format consent of the candidate certified by his or her signature has to be appended to the application, in which the candidate must confirm that he or she is proficient in Estonian at least at the level provided for in § 5(1) of the Language Act. According to § 26(12) of the Local Government Council Election Act, if there is no such confirmation, the candidate shall not be registered. If after the registration of candidates it is established that the candidate does not meet the requirements provided for in the election Act, a candidate has not confirmed that he or she is proficient in Estonian at least at the required level, or he or she is not proficient in Estonian at the required level, the candidate may be excluded from among the registered candidates under § 27(3)4) of the election Act.

Thus, § 3(3) and 26(7)1) of the Local Government Council Election Act establish the general requirement of proficiency in Estonian for the candidates and make a reference that the Language Act provides for the level of proficiency in Estonian which meets the requirement.

According to § 5(1) of the Language Act, in order to work in a local government council, oral and written knowledge of Estonian is required, whereas “a description of the level of language proficiency shall be provided pursuant to procedure established by the Government of the Republic”.

As § 5(1) of the Language Act authorises the Government of the Republic to establish the procedure for the description of the level of language proficiency, the Riigikogu has, as a matter of fact, abstained from determining the level of proficiency of the Estonian language by law.

On the basis of this provision, the Government of the Republic approved on 16 July 1996, by Regulation no. 188, “The description of the level of the command of the Estonian language necessary to work in the Riigikogu and local government councils”. Clause 2 of the description provides that the knowledge of Estonian must enable to participate in the council meetings and in the work of commissions and factions. It is explained in the same provision that thus the knowledge of Estonian must enable a member of a local government council to understand legislation and other texts, express his or her opinion, and participate in negotiations, draw up draft legislation, submit enquiries and proposals, and give reports pertaining to the agenda of a session, fulfil tasks given by a council commission or faction, communicate with electors and colleagues and reply to appeals, petitions, enquiries and complaints. Clause 3 of the description stipulates a requirement that the proficiency in Estonian of a member of a local government council must correspond to communicative situation in its style and function, and that his or her speech must be comprehensible and his or her written expression correct.

II.

In its judgment of 5 February 1998 the Constitutional Review Chamber of the Supreme Court stated the following: “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.” With regard to the requirement that a member of a local government council must be proficient in Estonian the Chamber stated in the same judgment: “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, for the reasons stated in the Constitutional Review Chamber judgment of 5 February 1998, § 5(1) of the Language Act is in conflict with § 104(2)4) of the Constitution with regard to the determination of the level of language proficiency and also to the extent that it authorises the Government of the Republic to establish the procedure for the description of the knowledge of Estonian.

Also, the Government of the Republic Regulation no. 188 of 16 July 1996 is in conflict with §§ 3(1), 87(6) and 104(2)4) of the Constitution to the extent that it establishes the description of the level of proficiency in Estonian necessary to work in a local government council.

The Harju County Court suggests in its petition that the Supreme Court declare § 5(1) of the Language Act and the Government of the Republic Regulation no. 188 of 16 July 1996 partly invalid. Pursuant to § 4(3) of the Constitutional Review Court Procedure Act the Supreme Court examines the constitutionality and legality of legislation and international agreements only to the extent requested in the petition, the Supreme Court is not competent to examine the constitutionality of § 5(1) of the Language Act and the Government of the Republic Regulation no. 188 of 16 July 1996 in their entirety.

III.

Pursuant to § 52(1) of the Constitution the official language of state agencies and local governments shall be Estonian. Under § 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 requirements referred to in the Constitution may, in substance, serve as a basis for electoral qualifications affecting the passive right to vote. To establish such qualifications, relevant requirements and conditions have to be provided for by an electoral Act as a constitutional law. The conformity of language qualifications with the Constitution proceeds from the preamble of the Constitution, pursuant to which one of the aims of the Republic of Estonia is to guarantee the preservation of the Estonian nation and culture throughout the ages. As the Estonian language is an essential component of the Estonian nation and culture, without which the preservation of the Estonian nation and culture is not possible, the enacting of electoral qualifications guaranteeing the use of Estonian by the Local Government Council Election Act is constitutionally justified. That is why section § 3(3) of the Local Government Council Election Act, to the extent that it establishes the general requirement of the command of Estonian, is also in conformity with the Constitution. The norm, within the same provision, referring to the Language Act, though, is unconstitutional, because pursuant to § 104(2) of the Constitution a constitutional law must not make references to ordinary laws. § 26(7)1) of the Local Government Council Election Act is also unconstitutional to the extent that it refers to § 5(1) of the Language Act.

IV.

The general requirement of the command of Estonian and the language qualification for local government council elections are conditions restricting electoral rights and as such these must meet the constitutional aim of guaranteeing the preservation of the Estonian nation and culture, and be in conformity with the bases for requirements concerning the use of Estonian established by §§ 52(1) and 51(1) of the Constitution. Such restriction must not distort the bases of local government, which proceed from §§ 154(1) and 156(1) of the Constitution, namely that the representative body of a local government, which shall resolve and manage all local issues, shall be elected in free, general, uniform and direct elections. Also, the constitutionally justified electoral qualification guaranteeing the use of Estonian may – due to the extent of the restriction – prove to be in conflict with the referred provision of the Constitution or infringe the principle of the representative quality of a local government representative body. Pursuant to § 11 of the Constitution the restrictions of rights and freedoms – and electoral qualification is essentially a restriction – must be necessary in a democratic society and must not distort the nature of the rights and freedoms restricted.

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

To satisfy the petition of the Harju County Court of 4 September 1998, and to declare invalid:

- 1. § 3(3) of the Local Government Council Election Act to the extent that it makes a reference to the Language Act (the words “...at the level provided for in the Language Act”);**
- 2. § 26(7)1) of the Local Government Council Election Act to the extent that it makes a reference to the Language Act (words of the second sentence “...at least at the level provided for § 5(1) of the Language Act”);**

3. second sentence of § 5(1) of the Language Act (“The description of the level of the command of Estonian shall be provided for according to the procedure established by the Government of the Republic”);

4. The Government of the Republic Regulation no. 188 of 16 July 1996 entitled “Enactment of the description of the level of proficiency in Estonian necessary to work in the Riigikogu and local government councils” to the extent that it establishes the description of the level of proficiency in Estonian necessary for working in a local government council.

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

Jaano Odar,
Chairman of the Constitutional Review Chamber