

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 11 August 1993**

Review of the petition of the Chancellor of Justice under § 142(2) of the Constitution for the declaration of invalidity of the Narva City Council resolution no. 15/163 of 28 June 1993, entitled "The opinion on the Foreigners Act".

The Constitutional Review Chamber sitting in a panel presided over by the chairman of the Chamber, Chief Justice Rait Maruste and composed of members of the Chamber, justices Tõnu Anton, Lea Kalm, Jaano Odar, Jüri Pöld, with the Chancellor of Justice Eerik-Juhan Truuväli, Minister of Justice Kaido Kama, and the representative of the Narva City Council Vladimir Kuznetsov appearing, and in the presence of the acting secretary to the Chamber Katri Hellat and interpreter V. Heiman, reviewed the petition of the Chancellor of Justice for the declaration of invalidity of the Narva City Council resolution no. 15/163 of 28 June 1993, entitled "The opinion on the Foreigners Act", due to conflict with the provisions of §§ 2, 154 and 3 of the Constitution in their conjunction.

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

On 28 June 1993 the Narva City Council passed resolution no. 15/163, entitled "The opinion on the Foreigners Act". In the preamble of that resolution the council found that the Foreigners Act and several other Acts of the Republic of Estonia, adopted earlier (the Language Act, the Citizenship Act, the Riigikogu Election Act and the Local Government Council Election Act, the Schools and Upper Secondary Schools Act), as well as the establishment of a visa regime were discriminatory against the majority of the electors of the council. The city council decided to hold a referendum (plebiscite) in Narva on the 16 and 17 July 1993, posing the following question: "Do you want Narva to have the status of a national-territorial autonomy within the Republic of Estonia?" It was decided that the results of the referendum would be examined at a session of the city council. At the same time the issue of organisation of the elections to the city council was resolved. In order to conduct the referendum social organisations and movements were ordered to appoint their representatives to the City Referendum Committee by June 30.

The composition of the City Referendum Committee was approved by the Narva City Council resolution of 30 June 1993.

On 30 June 1993, on the basis of § 142(1) of the Constitution, the Chancellor of Justice made a proposal to the Narva City Council to bring resolution no. 15/163 of 28 June 1993, entitled "The opinion on the Foreigners Act", into conformity with the Constitution and the law.

The Narva City Council continued the preparations for the referendum by its resolution no. 15/165 of 7 July 1993, entitled "On the rooms where the referendum (plebiscite) shall be held". By resolution no. 15/166 of the same date additional members to the City Referendum Committee were appointed, the formulation of the question to be posed at the referendum and the ballot paper form were approved and other issues relating to the organisation of the referendum were resolved.

In its response to the Chancellor of Justice dated 17 July 1993 the Narva City Council stated that its resolution no. 15/163 did not violate the Constitution and, specifically, § 2 thereof, and the council did not amend it.

The referendum was conducted on 16 and 17 July 1993.

On 20 July 1993, pursuant to § 142(2) of the Constitution and § 17 of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice submitted to the Supreme Court his petition no. 1 for the declaration of invalidity of the resolution of the Narva City Council no. 15/163 of 28 June 1993, entitled "The opinion on the Foreigners Act", due to conflict with the provisions of § 2, 154 and 3 of the Constitution in their conjunction.

The Chancellor of Justice motivates his petition with the following arguments:

1. § 2 of the Constitution does not provide for a national-territorial autonomy within the Republic of Estonia. The absence of an Act concerning the division of territory of Estonia into administrative units does not constitute a ground for a local government council to determine its own status, or to change the constitutional order of the Republic of Estonia. According to § 2 (2) 2) of the Local Government Organisation Act, local government is exercised by democratically formed legislative and executive bodies

and, with regard to local issues, by means of opinion polls or public initiative. Changing the constitutional order is not a local issue (§§ 2(2), 3, 106 (2), 161 (1), and 162 of the Constitution);

2. § 2 of the Local Government Council Election Act establishes that declaration of local government council elections is within the exclusive competence of the Riigikogu. By the resolution of 17 June 1993, entitled "Declaration of Elections to Local Government Councils", the Riigikogu set 17 October 1993 as the day of local government elections. Therefore, clause 2 of the Narva City Council resolution no. 15/163 of 28 June 1993 is in conflict with to the provisions of § 2 of the Constitution.

3. For the reasons set forth in paragraphs 1 and 2 above, the preparatory procedures stipulated by the Narva City Council in clause 3 of its resolution no. 15/163 of 28 June 1993 are in conflict with the Constitution and the law.

Having reviewed the documents submitted and having heard the explanations of the participants, the Court found the following:

The Court grounds its interpretation of the term "referendum" on § 105(I) of the Constitution, which provides that bills and other national issues may be submitted to a referendum. The Constitution makes no reference to local referenda. By analogy, the Court interprets a local referendum to mean the taking of decisions concerning issues within the competence of a local government. The term "opinion poll" is not used in the Constitution. The result of an opinion poll, unlike that of a referendum, is not binding on either the national or local government authorities and consists only in finding out the opinion of the persons entitled to participate in the opinion poll.

The Narva City Council resolution uses the term "referendum (plebiscite)". The term "plebiscite" is not used in the Constitution or in the Acts in force. In the official Russian translation of the Constitution the equivalent of the Estonian term "*rahvahääletus* (referendum)" is "referendum". The resolution of the Narva City Council no. 15/163 of 28 June 1993 contains a mixed usage of two essentially different legal terms referendum and plebiscite, as a result of which it is unclear what exactly the council actually meant.

According to § 154(I) of the Constitution local governments shall resolve and manage local issues. The formation of a national-territorial autonomous unit is not a local issue, instead it is a national issue to be resolved pursuant to the procedure for deciding national issues. Therefore, the conducting of a referendum concerning national-territorial autonomy is outside the competence of a local government and is in conflict with § 154(I) of the Constitution. § 50 of the Constitution does provide the opportunity for national minorities to establish, in the interests of their national culture, self governing authorities under the conditions and procedures set forth in the National Minorities Cultural Autonomy Act. The Constitution does not provide for a national-territorial autonomy. The fact that the Constitution does not refer to national-territorial autonomy means that such autonomy is in conflict with the spirit of the Constitution.

For the referred reasons clause 1 of the resolution of the Narva City Council of 28 June 1993 is in conflict with the Constitution. For the same reasons clauses 2 and 3 of the resolution of the Narva City Council of 28 June 1993, which regulate the implementation of clause 1, are also in conflict with the Constitution and, consequently, all the decisions made and procedures performed on the basis of and for the implementation of this resolution, are invalid.

If the Narva City Council used the term "referendum" in the sense of a public opinion poll, the results of the poll are not legally binding.

On the basis of the foregoing and pursuant to § 19 (I) 2) of the Constitutional Review Court Procedure Act, the Constitutional Review Chamber has decided:

To satisfy the petition of the Chancellor of Justice of the Republic of Estonia no. 1 of 20 July 1993, and to declare the Narva City Council resolution no. 15/163 of 28 June 1993, entitled "The opinion on the Foreigners Act", invalid in its entirety.

This judgment is effective as of pronouncement and is not subject to further appeal.

Rait Maruste

Chief Justice of the Supreme Court