

**JUDGMENT
OF THE CONSTITUTIONAL REVIEW CHAMBER
OF THE SUPREME COURT
of 6 September 1993**

Review of the petition of the Chancellor of Justice, submitted pursuant to § 142(2) of the Constitution, for the declaration of invalidity of the Sillamäe City Council resolution of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993".

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 and the representative of the Sillamäe City Council A. Maksimenko appearing, and in the presence of the acting secretary to the Chamber Katri Hellat and interpreter Virve Heiman, reviewed the petition of the Chancellor of Justice for the declaration of invalidity of the Sillamäe City Council resolution of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993" because of conflict with the provisions of §§ 2, 3 and 154 of the Constitution in their conjunction.

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

On 6 July 1993 the Sillamäe City Council passed a resolution entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993". Clause 1 of the resolution set July 17 as the date for a referendum (public opinion poll of the residents) posing the following question: "Do you want Sillamäe to have a status of a national-territorial autonomy within the Republic of Estonia, on the territory of which equal rights would be guaranteed to all residents?". Clause 2 of the resolution invited social organisations and movements to appoint their representatives to the nine member City Committee for the purpose of conducting the referendum. On 7 July 1993 the Sillamäe City Council approved the composition of the Committee and formed five polling divisions.

On 12 July 1993 the Chancellor of Justice, on the basis of § 142(1) of the Constitution, made a proposal to the Sillamäe City Council to bring its resolution of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993", into conformity with the Constitution and the laws. The Sillamäe City Council received the proposal of the Chancellor of Justice on 12 July 1993. Two days later, on 14 July 1993, the city council passed a petition addressed to the President of the Republic. In that petition no reference was made to the proposal of the Chancellor of Justice. On 2 August 1993 the Chairman of the Sillamäe City Council informed the Chancellor of Justice that the city council "found no possibility to annul the decision taken on 6 July 1993", without any reference to relevant resolution of the city council.

The referendum (opinion poll among the residents) was held on 17 July 1993.

On 3 August 1993, on the basis of § 142(2) of the Constitution and § 17 of the Chancellor of Justice Activities Organisation Act, the Chancellor of Justice submitted a petition to the Supreme Court. In the petition the Chancellor of Justice requested that the Supreme Court, pursuant to § 152(2) of the Constitution, declare invalid the resolution of the Sillamäe City Council of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993".

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. 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. The calling of a referendum does not fall within the competence of a local government.

2. For the reasons explained in paragraph 1 of the Chancellor of Justice's petition the preparatory procedures stipulated in clause 2 of the Sillamäe City Council resolution of 6 July 1993 are in conflict with the Constitution and the law.

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

In the resolution of the Sillamäe City Council the term "referendum (opinion poll among the residents)" was used. In the official Russian translation of the Constitution the equivalent to the Estonian term "*rahvahääletus* (referendum) is "referendum". "Referendum" and "opinion poll among the residents" are concepts of different legal content. A possibility of an opinion poll among the residents is provided for in § 15(2) of the Local Government Organisation Act. The legal consequences of an opinion poll among the residents and of an opinion poll do not differ. The result of an opinion poll among the residents, unlike of that of a referendum, is not legally binding on either the national or local government authorities and consists only in finding out the opinion of those participating in the opinion poll. Because of the use of

terms with different content it remains unclear what the Sillamäe City Council actually meant in its resolution of 6 July 1993.

According to § 154(1) of the Constitution local governments shall resolve and manage all local issues. According to § 2 (2) 2) of the Local Government Organisation Act local government is exercised by democratically formed legislative and executive bodies, and also by means of opinion polls or public initiative but with regard to local issues only. Formation of a national-territorial autonomous unit is not a local issue, instead it is a national issue. Therefore the holding of a referendum concerning a national-territorial autonomy is outside the competence of a local government and is in conflict not only with § 154(1) of the Constitution, but also with § 2 (2) of the Local Government Organisation Act.

According to § 15(2) of the Local Government Organisation Act a local council has the right to organise opinion polls among the residents of the territory of the local government concerning essential issues. However, pursuant to § 2 (2) 2) of the same Act the opinion polls must be confined to local issues only. Therefore, the organisation of an opinion poll among the residents concerning a national-territorial autonomy is in conflict with § 2 (2) 2) of the Local Government Organisation Act.

§ 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 the resolution of the Sillamäe City Council of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993", is in conflict with the Constitution and the Local Government Organisation Act. All the decisions made and procedures performed on the basis of and for the implementation of this resolution are invalid, too.

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

To satisfy the petition of the Chancellor of Justice of 3 August 1993, and to declare the resolution of the Sillamäe City Council of 6 July 1993, entitled "On the implementation of the instructions of the participants of the meeting of 30 June 1993", 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