



S U P R E M E C O U R T

CONSTITUTIONAL REVIEW CHAMBER

JUDGMENT

in the name of the Republic of Estonia

Case number	5-24-29
Date of judgment	26 February 2025
Judicial panel	Chair Villu Kõve, members Ivo Pilving, Heili Sepp, Nele Siitam and Margit Vutt
Case	Review of the constitutionality of the failure to issue legislation of general application to verify the accuracy of residence data in the population register
Basis for proceedings	Application of 3 October 2024 by Elva Rural Municipal Council
Participants in the proceedings	Elva Rural Municipal Council Riigikogu Chancellor of Justice Minister of Justice and Digital Affairs Minister of the Interior
Manner of examination	Written procedure

OPERATIVE PART

To deny the applications by Elva Rural Municipal Council.

FACTS AND COURSE OF PROCEEDINGS

1. By decision No 10-6/10 of 10 September 2021, Elva Rural Municipality Electoral Committee registered the candidates for the municipal council elections to be held on 17 October 2021.

2. On 13 September 2021, Vahur Jaakma, Maigi Keerd and Mati Miil, candidates on the Isamaa Party list in Elva rural municipality, filed a complaint with the National Electoral Committee (NEC) against the decision of Elva Rural Municipality Electoral Committee, requesting annulment of the decision to the extent that Urmas Kruuse, Kertu Vuks, Mikk Järv, Marika Saar, Maano Koemets, Aleksander Suvorov, Peeter Ernits and Sulev Kuus were registered as candidates in Elva Rural Municipal Council elections, on the grounds that their permanent residence was not in Elva rural municipality. In order to prove the statutory non-compliance of the residence data of these candidates, the applicants attached to their complaint, inter alia, transcripts from interviews with the candidates published in newspapers

and from the data on the social networking site Facebook, declarations of interests, transcripts from the land register and an annual report of a foundation related to a candidate.

3. By its decision No 15 of 15 September 2021, the NEC denied the complaint, finding that Elva Rural Municipality Electoral Committee correctly applied the law by basing the registration of candidates on their place of residence as recorded in the population register. On 17 September 2021, the applicants had recourse to the Supreme Court to challenge the NEC decision. By its judgment No 5-21-12/2 of 28 September 2021, the Supreme Court Constitutional Review Chamber denied the complaint.

4. On 30 September 2021, the applicants filed a complaint with Tartu Administrative Court, seeking to compel Elva rural municipality to amend the entries regarding the residential addresses of Urmas Kruuse, Kertu Vuks, Marika Saar and Maano Koemets in the population register. The applicants also sought interim relief and suspension of the validity and enforcement of the residence entries of the contested candidates in the population register until the conclusion of the court proceedings.

5. By an order of 4 October 2021, Tartu Administrative Court returned the complaint pursuant to § 121(2) clause 1 of the Code of Administrative Court Procedure on the grounds of a manifest lack of standing and denied the application for interim relief. The applicants filed an interim appeal against the Administrative Court order with the Circuit Court of Appeal. By an order of 15 October 2021, Tartu Circuit Court of Appeal denied the applicants' interim appeal and upheld the Administrative Court order. The applicants filed an interim appeal with the Supreme Court, seeking annulment of the orders of the Circuit Court of Appeal and the Administrative Court and referral of the case to the Administrative Court for adjudication. In its order No 3-21-2230/16 of 21 June 2022, the Supreme Court Administrative Law Chamber upheld the applicants' standing, finding that the candidacy of persons with an inaccurate residence recorded in the population register may have an impact on the election results and the applicants' chances of being elected. The Administrative Law Chamber overturned the Circuit Court or Appeal order and para. 1 of the operative part of the Administrative Court order on account of a material violation of procedural law and remitted the complaint to the Administrative Court for a decision on whether to admit it for proceedings.

6. By an order of 30 June 2022, Tartu Administrative Court admitted the complaint for proceedings and, by its judgment of 14 December 2022, the Administrative Court denied the complaint.

7. By its judgment of 29 February 2024, Tartu Circuit Court of Appeal overturned the Administrative Court judgment and entered a new judgment in the case, by which it satisfied the complaint and obliged Elva rural municipality to verify the accuracy of the residential addresses, as recorded in the population register, of the persons named in the complaint of 30 September 2021, and to make the necessary amendments should the entries prove to be inaccurate. The judgment of the Circuit Court of Appeal has become final.

APPLICATION BY ELVA RURAL MUNICIPAL COUNCIL

8. On 3 October 2024, Elva Rural Municipal Council filed an application with the Supreme Court, seeking a declaration of unconstitutionality of the absence of legal norms specifying whether, under what conditions and by what means a local authority may arrange a procedure for substantive verification of residence data already entered in the population register and thereby ensure that only local residents serve on the municipal council and participate in municipal council elections. Alternatively, Elva rural municipality seeks a declaration of unconstitutionality of the situation of

legal uncertainty, which prevents a local authority from determining its rights and obligations with sufficient clarity and precision in a situation where it is obliged to carry out a substantive verification procedure in respect of residence data already entered in the population register and, in the event of inaccuracy of the data, to make the relevant amendments to ensure that only local residents serve on the municipal council.

9. According to the application, the absence of provisions regulating verification of the accuracy of the place of residence recorded in the population register, or the lack of legal clarity of such provisions, interferes with the right of self-organisation of Elva rural municipality as guaranteed by § 154(1) of the Constitution. The Supreme Court has also affirmed the right of a local authority to challenge inaction that interferes with the constitutional guarantees of a local authority, i.e. failure to issue a legislative act.

10. In line with the principle of legality laid down by § 3(1) of the Constitution, a public authority is entitled to act only if the legal norms prescribe both its competence and authorisation. A situation is contrary to the local government right of self-organisation where the legislator has failed to establish regulatory provisions that would enable a local authority to ensure the accuracy of local residents' place of residence data recorded in the population register and to verify compliance with the restrictions on being a member of a municipal council. The right of local government self-organisation laid down by § 154(1) of the Constitution involves discretion in decision-making and choice in resolving local issues. In order to exercise the right of self-organisation, it is essential that only local residents serve on the municipal council. The Supreme Court has said that a discrepancy between the permanent place of residence of a candidate for a municipal council as recorded in the population register and their actual permanent place of residence is not legally permissible. Under the Population Register Act (PRA), verification of the accuracy of residence data of a candidate for a municipal council should take place during the procedure for entering the residential address in the population register and in the course of verifying the accuracy of the entries, which is a procedure administered by a local authority (Supreme Court Constitutional Review Chamber judgment of 25 September 2021, 5-21-12/2, para. 26). The local authority is tasked with ensuring the accuracy of the data in the population register and compliance with the restriction laid down by § 5(5) of the Municipal Council Election Act (MCEA). Notwithstanding the local authority's competence to verify the accuracy of the residence data in the population register, the current law lacks delegating norms to carry out substantive checks.

11. The Supreme Court has held that the current law does not provide for a procedure for ascertaining the actual permanent place of residence of candidates for a municipal council (Supreme Court Constitutional Review Chamber judgment of 25 September 2021, 5-21-12/2, para. 24). Verification of residence data in the population register is limited to a formal check. Under § 68 of the PRA, the obligation to ensure the accuracy of the residence data already entered in the population register has been imposed on the individuals themselves, not on the local authority. Under § 6(1) of the PRA, the local authority and the public must presume the accuracy of the residence data entered in the register. The verification of residence data already entered in the register is regulated only by § 88(3) and § 87¹ of the PRA. The verification possibilities set out in the PRA are very limited, applying only in special cases. Therefore, it is not possible to enforce the court judgment.

12. The PRA regulates the initiation of proceedings for the entry or amendment of residence data in the population register on the initiative of a local authority only in cases where the residential address of a person permanently staying within the territory of the local authority has not yet been entered in the register or if the person confirms that they no longer use the residence at the address recorded in the register (§§ 86 and 87¹ PRA). In other cases, it is not legally possible to change a residential

address or terminate the validity of the data, since no legislation of general application regulates such a procedure. Consequently, no legal norms exist in the current law on the basis of which a local authority could unilaterally amend a person's residence data or terminate the validity of such data upon ascertaining the inaccuracy of the residence data in the population register.

13. Even if the relevant norms were to exist in the legal order, the current law does not contain a definition of a local resident, i.e. a criterion by which to determine the accuracy of a person's place of residence entry. Section 65(1) of the PRA sets out that a person must submit the address of the residence where they permanently or primarily reside for entry in the population register. However, this provision does not contain the criteria based on which a person's permanent or primary place of residence is determined. Moreover, the PRA allows a person to use several permanent or primary places of residence (§ 65(2) PRA). Thus, the person themselves may determine which residence data carry legal significance and which are entered in the population register as an additional address. It is not possible to rely solely on the temporal criterion, i.e. the local authority in which the person spends the most time. The Circuit Court of Appeal considered it significant that the municipal council members had worked for a certain period of time or their place of residence had been, at some point, in another local authority. Such an interpretation of a 'local resident' fails to take account of modern living arrangements and is not in line with the substance and spirit of the PRA. The work of a municipal council member is not their main job and is organised so that participation in council sessions is possible, with reasonable effort, alongside other work. Thus, it is common that a municipal council member's principal job may be in another local authority. However, this does not mean that these council members are not local residents or that, in such cases, there should be reasonable doubt as to the accuracy of a person's registered place of residence. As no law contains the definition of a local resident or the criteria based on which a local resident is determined, a local authority is unable to carry out a substantive check in conformity with the requirements of the Constitution.

14. The mandate obtained in an election forms part of the passive suffrage. The verification procedure may lead to the premature termination of a municipal council member's mandate and the loss of the right to stand as a candidate in local elections. Therefore, changing the residence entry of a candidate for a municipal council or of a municipal council member in the population register constitutes interference with the person's passive suffrage, and such interference requires a precise legal basis arising from law.

15. Should the Supreme Court take the position that the legal order contains norms for arranging a substantive verification procedure in respect of a place of residence already entered in the population register, then these norms are legally unclear and therefore violate the applicant's right of self-organisation. In the case of data already entered in the register, substantive verification can be carried out only in limited cases. In other situations, it is not sufficiently clear to the local authority or the persons concerned whether, under what conditions and in what manner a local authority can verify the accuracy of the residence data already entered in the population register. It is not reasonably possible to eliminate this legal uncertainty even by taking account of the purpose and legislative history of the norms, other legal acts, the general principles of law, and by developing them further. Consequently, this constitutes a lack of legal clarity that is unconstitutional and violates the right of local authorities to self-organisation.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[...]

OPINION OF THE CHAMBER

35. Elva Rural Municipal Council seeks a declaration of unconstitutionality of the absence of legal norms which prevents a local authority from verifying the accuracy of entries regarding a person's place of residence in the population register. If no such situation is found to exist, then, in the opinion of Elva Rural Municipal Council, the current regulation is legally unclear and therefore contrary to the Constitution.

36. The Chamber will first assesses the admissibility of the applications (I), then whether the alleged absence of norms would constitute interference with the local government constitutional guarantees (II), whether the current law contains provisions that sufficiently regulate the substantive verification of residence entries in the population register (III), and whether the provisions regulating substantive verification in the current law are unclear (IV).

(I) Admissibility of the applications

37. Elva Rural Municipal Council filed an application with the Supreme Court under § 7 of the Constitutional Review Court Procedure Act (CRCPA). An application filed under § 7 of the CRCPA is admissible if two conditions are simultaneously met: (1) the application has been submitted by the municipal council by a majority of the votes of its members, and (2) the application alleges that an act of general application or a provision thereof contravenes local authority constitutional guarantees (Supreme Court Constitutional Review Chamber judgment of 20 December 2016, 3-4-1-3-16, para-s 75 and 81; most recently Supreme Court *en banc* judgment of 5 July 2024, 5-23-38/48, para. 80).

38. The Supreme Court has affirmed the right of a local authority to challenge the failure to issue a legislative act of general application if this violates the local authority's constitutional guarantee (Supreme Court *en banc* judgment of 16 March 2010, 3-4-1-8-09, paras 93 and 94; most recently 5-23-38/48, para. 80).

39. On 30 September 2024, Elva Rural Municipal Council adopted Resolution No 132, „Submission of an application to the Supreme Court“. Pursuant to para. 2 of the resolution, the text of the application was approved as set out in the annex to the resolution. The text of the application submitted to the Supreme Court coincides with the annex to the aforementioned resolution of Elva Rural Municipal Council. According to the application, the absence of provisions regulating the organisation of a substantive verification procedure in respect of the residence data in the population register or, alternatively, the lack of clarity of such provisions, interferes with the right of self-organisation of local authorities arising from § 154(1) of the Constitution, since the absence of these provisions makes it impossible to ensure that only local residents serve on the municipal council. Thus, the applications by Elva Rural Municipal Council are admissible.

(II) Interference with local government constitutional guarantees

40. In the opinion of Elva Rural Municipal Council, its right of self-organisation is interfered with by the fact that the legislator has failed to regulate, or has regulated in a manner inconsistent with the requirements of the Constitution, the rights and duties of a local authority for carrying out a substantive check of the accuracy of the residence data in the population register in respect of candidates for a municipal council and municipal council members.

41. Section 154(1) of the Constitution stipulates that all local issues are decided and organised independently by local authorities on the basis of laws, i.e. it lays down the right of self-organisation of local authorities. Interference with the right of self-organisation means any negative influence by the state on the right to resolve local issues independently (Supreme Court Constitutional Review Chamber judgment of 16 May 2014, 3-4-1-11-16, para. 58). Failure to issue a legislative act of general application interferes with the right of self-organisation in a situation where a local authority is unable to resolve a local issue because the state has failed to establish the legal norms necessary for resolving that local issue.

42. The Constitutional Review Chamber of the Supreme Court has previously taken the position that the local government right of self-organisation does not extend to the provisions determining the election of a municipal council as an external structure of a local authority. The establishment of a detailed election procedure based on the fundamental principles of the electoral system is a state-level issue. However, the conduct (organisation) of local elections is a local issue (Supreme Court Constitutional Review Chamber judgment 9 June 2009, 3-4-1-2-09, para. 33; Supreme Court Constitutional Review Chamber judgment of 22 December 2009, 3-4-1-16-09, para. 35). Under § 5(5) of the MCEA, a person wishing to stand as a candidate in municipal council elections must be a permanent resident of the city or rural municipality where they wish to stand as a candidate. Ensuring compliance with the condition set out in the aforementioned provision is a local task, since it is part of the conduct of elections.

43. The Constitutional Review Chamber of the Supreme Court has stated that § 5(5) of the MCEA cannot be interpreted so as to impose an obligation on electoral committees to verify the accuracy of the residential address entered in the population register and to ascertain the candidate's actual permanent residence when registering candidates (Supreme Court Constitutional Review Chamber judgment of 28 September 2021, 5-21-12/2, para. 25). Thus, § 5(5) of the MCEA provides only for a formal check of the accuracy of the residential address. At the same time, the Chamber found in the aforementioned case that although the current MCEA does not oblige the electoral committee to carry out a substantive verification procedure, it does not follow that a discrepancy between the permanent place of residence recorded in the population register and the actual permanent place of residence would be legally permissible (Supreme Court Constitutional Review Chamber judgment of 28 September 2021, 5-21-12/2, para. 26). In addition, it follows from § 156(2) of the Constitution that, in the conduct of local elections, it must be possible to rely on accurate data regarding voters' place of residence.

44. The accuracy of the residence data entered in the population register falls in the sphere of interest of local authorities more broadly than merely from the perspective of exercising electoral rights. Many local functions are linked to the registered place of residence, e.g. ensuring the possibility of fulfilling the obligation to attend school, providing social welfare and enabling attendance at a childcare institution (see §§ 8 and 10 of the Basic Schools and Upper Secondary Schools Act, § 5(1) of the Social Welfare Act, § 10 of the Preschool Childcare Institutions Act). In performing all the above functions, local authorities have a justified interest in the accuracy of individuals' residential addresses recorded in the register. In this regard, the Supreme Court has previously affirmed that a local authority is under no obligation to provide social services to those registered residents who actually live within the territory of another local authority (Supreme Court Constitutional Review Chamber judgment of 9 December 2019, 5-18-7/8, para. 184).

45. The formal check carried out by the electoral committee to compare the residential address provided in the application to stand for election with the residential address recorded in the population

register is a local task. It is also a local task to verify whether a person does indeed reside permanently at the residential address recorded in the population register.

46. A substantive check of the accuracy of the residence data presupposes the collection of evidence for establishing factual circumstances, which may interfere with the fundamental rights of the persons concerned. Above all, such a check may interfere with the right to the inviolability of family and private life arising from § 26 of the Constitution of the persons concerned, since verification of the accuracy of a person's registered residential address presupposes, *inter alia*, the processing of personal data. Regardless of whether a local authority performs local or state functions, any activity that interferes with fundamental rights must always have a lawful basis (see, e.g., Supreme Court *en banc* judgment of 3 December 2007, 3-3-1-41-06, para. 27).

47. If the legislator had not established norms in the current law for ascertaining the actual place of residence, Elva rural municipality would not be able to ensure that only local residents serve as members of the municipal council. As the absence of relevant norms would adversely affect the right of Elva rural municipality to resolve a local issue, it would also interfere with the local authority's right of self-organisation arising from § 154 of the Constitution.

(III) Provisions regulating the substantive verification of residence entries in the population register

48. The Constitution allows state agencies, local authorities and their officials to interfere with someone's family and private life only in the cases and pursuant to a procedure provided by law to protect health, morals, public order, or the rights and freedoms of others, to prevent a criminal offence or to apprehend a criminal offender. Verifying the accuracy of residence data in the population register is first and foremost necessary to protect the rights and freedoms of other persons, which may be interfered with by an inaccurate record of a person's place of residence. Public interest also exists in ensuring that a person's residential address in the population register, carrying legal significance, is the place of residence where the person actually resides permanently or primarily. An overview of the actual population based on accurate data enables a local authority, for example, to better plan provision of public services, be it public transport, waste transport, or the like (see also, e.g., Supreme Court Constitutional Review Chamber judgment of 8 March 2011, 3-4-1-11-10, para. 58). At the same time, knowingly submitting false information to an administrative authority constitutes an offence under § 280 of the Penal Code.

49. An entry in the population register is not constitutive and does not render the address entered in the register the person's place of residence. A person can freely choose their actual place of residence, regardless of the entry in the population register. However, accurate data must be submitted for entry in the population register, i.e. the person must choose an address with legal significance from among their actual places of residence (cf. Supreme Court Civil Chamber judgment of 12 January 2022, 2-19-1719/87, para. 14).

50. Interference with the inviolability of the home (§ 33 Constitution) would be relevant to consider in a case where the substantive check of a residence record were subject to the special state supervision measures set out in the Law Enforcement Act, primarily entry into premises and examination of premises (§§ 50 and 51 of the Law Enforcement Act, respectively). Section 103 of the PRA allows the data controller to apply, for the purposes of carrying out state supervision over the maintenance of the population register and the processing of data (see § 102 PRA), certain special state supervision measures set out in the Law Enforcement Act, including the aforementioned entry into and examination of premises. However, the controller of the population register is the Ministry of the

Interior (§ 3(2) PRA). Thus, a local authority cannot rely on §§ 102 and 103 of the PRA when carrying out a substantive check of a residence record.

51. Under § 65(1) of the PRA, a person must submit the address of the residence where they permanently or primarily reside for entry in the population register. Under § 14 of the General Part of the Civil Code Act, a person's residence is the place where they permanently or primarily live. A person may have several places of residence at the same time, and a person's place of residence is deemed to have changed if they move to live elsewhere in a manner from which it can be inferred that they intend to change their place of residence. Among other things, § 14(4) of the General Part of the Civil Code Act distinguishes a person's place of residence from their whereabouts.

52. In legal literature, the place of residence has been defined as the spatial centre of a person's living arrangements, as well as as the place to which they invariably return. Permanent place of residence means the place where a person habitually stays, where their home is, i.e. the place with which they are most personally connected, where they sleep, rest, keep their personal belongings, etc. The place of residence need not be the location of the main property. Thus, the most significant portion of a person's property – immovables, ships, etc. – may be located elsewhere than where they habitually live, without the location of the property affecting their place of residence. A person may also have several permanent residences at the same time, and each place of residence carries the same legal significance in relation to the person (see P. Varul et al. *Tsiviilseadustiku üldosa seadus. Kommenteeritud väljaanne*. [General Part of the Civil Code Act. Annotated edition]. Tartu 2023, § 14 comments. 3.2.1. and 3.2.2.). Whether a person has residence in several places at the same time must be established by means of evidence.

53. It follows from § 88(3) of the PRA that if the address of a space not belonging to the person has been recorded in the population register as their place of residence and, to the local authority's knowledge, the person does not use the space as their residence, the local authority may make enquiries with the owner of the space. If the owner of the dwelling states that the person is not using the space belonging to the owner as their residence and the person has no right to use the space belonging to the owner as their residence, the local authority terminates the validity of the person's residence data recorded in the register. If the person's place of residence recorded in the population register is the address of a dwelling owned by the person themselves, the local authority cannot make enquiries under § 88(3) of the PRA.

54. Section 87¹(1) of the PRA provides for the termination of the validity of residence data on the initiative of a local authority, but for this to occur, all the conditions set out in this subsection must be met (the person's residential address is recorded in the population register to the level of accuracy of a city, city district or rural municipality; the person is not staying, to the local authority's knowledge, within their territory or elsewhere in Estonia; the data on the place of stay specified in § 96(1) of the PRA have not been recorded in the population register as the person's place of stay. This provision provides a basis for a local authority to terminate the validity of the residence data on its own initiative only if there are grounds to believe that the person is no longer in Estonia, i.e. it is applicable only in limited cases. However, § 88(3) and § 87¹(1) of the PRA do not constitute exhaustive grounds for correcting an inaccurate record in the population register.

55. The Supreme Court has previously affirmed the obligation of a local authority to verify, even on its own initiative, the accuracy of a person's residence data in the population register in the event of a reasonable suspicion that the record is inaccurate (see 3-21-2230/16, para. 12.3). Storing data in the population register is an ongoing operation. The purpose of maintaining the population register is to collect reliable information (§ 4 PRA), which means that the personal data processed must be

accurate. Pursuant to § 84(1) clause 4 of the PRA, a local authority refuses to enter the residence data indicated in the notice of residence in the population register if the person has submitted false information in their notice of residence. Regardless of whether the residence data in the population register have been inaccurate from the outset or have become inaccurate after the entry was made, the relevant local authority is obliged to stop processing the inaccurate data.

56. Under § 4(1) of the State Liability Act, a person may request the termination of a violation of rights resulting from a continuing administrative measure, provided that this can be done without incurring excessive costs. Consequently, a person whose rights are interfered with by an inaccurate entry may apply to the relevant local authority for verification of the accuracy of another person's residence data in the population register. In doing so, the applicant must provide evidence which gives rise to at least a reasonable suspicion that the person mentioned in the application does not reside at the address recorded in the population register. Carrying out such a check in a situation where no reasonable suspicion has arisen – either from the person's own communication or from other information received by the local authority – that the person has submitted false information to the administrative authority or that the information has become inaccurate, would constitute arbitrary interference with the private life of the persons concerned.

57. If the evidence submitted with the application or other information at the disposal of the local authority gives rise to a reasonable suspicion that the person does not reside at the address recorded in the population register, the local authority is obliged, under § 44(1) clause 2 of the Administrative Procedure Act, to renew the procedure for entering the residential address in the population register (cf. also Supreme Court Administrative Law Chamber judgment of 11 June 2019, 3-16-781/50, para. 17.1). At the same time, it cannot be ruled out that the application may contain information or opinions that may prompt the administrative authority to change its previous positions. In such a case, the administrative authority may renew the proceedings on its own initiative (*ibid.*). If the residence data have been false from the outset, the proceedings must be renewed in conjunction with § 84(1) clause 4 of the PRA, because the local authority should have refused to enter the residence data indicated in the notice of residence in the population register on the grounds of their inaccuracy. The investigative principle (§ 6 Administrative Procedure Act) applies to the renewed proceedings, and in the course of these proceedings, pursuant to § 38 of the Administrative Procedure Act, the local authority may gather evidence to ascertain whether the person mentioned in the application resides permanently at the place of residence recorded in the population register.

58. Under § 38(2) of the Administrative Procedure Act, evidence may consist of explanations by participants in proceedings, documentary evidence, physical evidence, on-site inspections, witness testimonies and expert opinions. Thus, in the course of verifying the accuracy of a residence record, a local authority may, *inter alia*, request confirmation from the person that they live at the residence recorded in the population register, as well as documentary evidence, and may also take statements from other persons. An administrative authority may, for the purpose of performing an act within administrative proceedings, process personal data relating to the facts necessary for the case under consideration, unless otherwise provided by law or legislation issued on the basis thereof (§ 5(5) Administrative Procedure Act).

59. If, according to the population register, a municipal council member's permanent place of residence is not located in the relevant rural municipality or city, the council member's mandate terminates prematurely (§ 18(1) clause 3 Local Government Organisation Act), which constitutes interference with the person's passive suffrage. However, this cannot serve as a reason to exclude or restrict scrutiny, because if the entry has been inaccurate from the outset, the person has been elected to the municipal council by means of fraud, which does not merit protection. Even if the entry

regarding residence within the territory of the local authority becomes incorrect later, the person is no longer a local resident and their mandate as a municipal council member must come to an end in accordance with the law.

60. It follows from the foregoing that the current PRA and other relevant legislation, primarily the Administrative Procedure Act, provide a local authority with sufficient means to verify and, where necessary, amend or delete inaccurate residence data from the population register. Although the law does not contain any special provisions regulating this particular procedure, it is possible to apply general rules when verifying the accuracy of a residential entry in the population register.

61. In the present case, what is at stake are, on the one hand, the rights of the person whose residence record in the population register is being contested and, on the other hand, the local authority's right to self-organisation and the rights of third parties, which may be interfered with by the person's inaccurate residence data. The current law allows to ensure sufficient protection of the right to self-organisation and the rights of the persons concerned without disproportionately interfering with the rights of the person whose residence record has been contested. It is possible to carry out substantive checks without excessively interfering in the private life of individuals. This is also compatible with § 26 of the Constitution, which allows the inviolability of private life to be restricted on the basis of law in order to protect public order or the rights of others, among other things.

62. In view of the foregoing, the Chamber finds that the current law contains norms for verifying the accuracy of a person's place of residence recorded in the population register, and that the alleged unconstitutional situation does not exist.

(IV) Lack of legal clarity of the provisions regulating the substantive verification of the record of residential address in the population register

63. Legal clarity presupposes sufficient clarity and comprehensibility of laws and other legislation to the extent that ensures a person a reasonable opportunity to foresee the actions of the state and to adjust their conduct accordingly. However, not every instance of lack of clarity or need for interpretation renders a law unconstitutional. A situation is lacking legal clarity only if it is not possible to reasonably eliminate conflicts arising during the interpretation of norms by taking into account the purpose and legislative history of the norms, other legal acts, general principles of law, and the like, and such lack of clarity prevents the identification and fulfilment of obligations arising from the law (Supreme Court Constitutional Review Chamber judgment of 19 December 2019, 5-19-38/15, paras 68 and 71). The provision on which interference is based must be all the more precise the more serious the interference with a right. The instances of interference with rights following the correction of an inaccurate entry in the population register are not serious, because no one should be able to base their rights on false claims. The fact that a public authority corrects inaccurate data in a public register cannot come as a surprise to individuals, since inaccurate register entries must, by their very nature, be corrected.

64. The current law allows a local authority to verify the accuracy of a person's residence data in the population register (see paras 53–59). The relevant provisions are not legally unclear merely because the legislator has not laid down specific regulations, and the legislation in the frame of the general part of administrative law (the Administrative Procedure Act and the State Liability Act) must also be applied in order to carry out the procedure.

65. In view of the foregoing, the provisions in the current law regulating the substantive verification of residence entries in the population register are not legally unclear and are therefore not unconstitutional.

(signed digitally)