



The Minister's order, by which the decision of the Salaspils Regional Council on establishing standing committees is partially suspended, is incompatible with Section 49 (1) of the law "On Local Governments"

On 29 June 2018, the Constitutional Court passed the judgement in case "On compliance of the Order of 1 August 2017 by the Minister for the Environmental Protection and Regional Development No. 1-13/6038 "On suspending Para 1, 3, 4 and 5 of the decision of 16 June 2017 by the Salaspils Regional Council "On Establishment of the Standing Regional Committees and Election of Members thereof" (Minutes No. 12, § 4)" with Article 1 of the *Satversme* of the Republic of Latvia and Section 49 of the law "On Local Governments".

The Contested Act

On 1 August 2017, the Minister for the Environmental Protection and Regional Development (hereinafter also – the Minister) issued Order No. 1-13/6038 "On suspending Para 1, 3, 4 and 5 of the decision of 16 June 2017 by the Salaspils Regional Council "On Establishment of the Standing Regional Committees and Election of Members thereof" (Minutes No. 12, § 4)¹.

The Legal Norms, the Compliance with which is under Review

Article 1 of the *Satversme*: "Latvia is an independent democratic republic."

Section 49 of the law "On Local Governments": "The operation of an unlawful binding regulation or other regulatory enactment or specific paragraphs of such issued by a city or municipality council, except the operation of decisions taken in accordance with the procedures of Section 47 of this Law, may be suspended by a substantiated order of the Minister for Environmental Protection and Regional Development. The order shall indicate the paragraphs of the specific binding regulations or other normative enactment that are to be revoked as unlawful, or shall indicate that the binding regulations or other regulatory enactment are to be revoked in their entirety. The order

¹ The contested act is available here: <https://www.vestnesis.lv/op/2017/154.11> (accessed: 29.06.2018).

shall be published in the official gazette *Latvijas Vēstnesis* within three days from its issue and shall be sent to the chairperson of the relevant city or municipality council, who shall be responsible for its implementation.

The chairperson of the city or municipality council shall convene, within two weeks after receipt of an order from the Minister for Environmental Protection and Regional Development, an extraordinary meeting of the city or municipality council in which shall be examined the issue regarding revocation of the relevant binding regulations or other regulatory enactment or specific paragraphs of such. The Minister for Environmental Protection and Regional Development shall be timely notified of the time and place of the extraordinary meeting of the city or municipality council.

If the city or municipality council fails to take a decision to revoke the relevant binding regulations or other regulatory enactment or specific paragraphs thereof, it shall submit an application to the Constitutional Court regarding the revocation of the order of the Minister within three months. In such case the order of the Minister for Environmental Protection and Regional Development, regarding the suspension of the operation of the city or municipality council binding regulations or other regulatory enactment or specific sections thereof, shall remain in force until the proclamation of the judgment of the Constitutional Court.

The city or municipality council has no right to submit an application to the Constitutional Court regarding the revocation of the order of the Minister for Environmental Protection and Regional Development, if it within two months following the day of receipt of the opinion of the Ministry of Environmental Protection and Regional Development has not fulfilled the duty to take a decision determined in Section 45, Paragraph four of this Law in which a substantiation is provided why the city or municipality council does not agree with that specified in the opinion of the Ministry of Regional Development and Local Government Matters.

If the city or municipality council or its chairperson fail to implement the provisions of Paragraph two or three of this Section, the unlawful binding regulations or other regulatory enactment or specific paragraph thereof shall be considered to no longer be

in force. The Minister for Environmental Protection and Regional Development shall issue a notice regarding such in the official gazette *Latvijas Vēstnesis*.”

The Facts of the Case

The case was initiated with regard to an application by the Salaspils Regional Council (hereinafter – the Council). On 1 August 2017, the Minister by the contested act suspended some paragraphs of the decision of 16 June 107 by the Council on establishing the standing committees and election of members thereof. The Minister holds that the Council, in establishing the composition of four of its committees, has not abided by the principle of proportionality. I.e., the number of council members elected to these committees, allegedly, is not proportional to the number of council members elected to the Council from each political party.

The Council has examined the contested act at an extraordinary meeting and decided to leave the Decision unamended, as well as to submit an application to the Constitutional Court regarding the contested act. The Council holds that in issuing the act the principle of separation of powers and the jurisdiction granted to the Minister by Section 49 of the Law “On Local Governments” had been breached. The decision is said to be political and the Minister, allegedly, cannot review the legality thereof.

The Court’s Findings

On the principle of self- governance

The basic norm of a democratic state governed by the rule of law and Article 101 of the *Staversme* includes the principle of self-governance, which, in turn, comprises the totality of minimum requirements regarding the organisation of the local government in a democratic state governed by the rule of law. The totality of minimum requirements or the principle of self-governance comprises: 1) the existence of a local government; 2) direct democratic legitimization of it. Thus, it creates the legal basis for the institutional existence and functional activities of local governments. [11.]

On the supervision of the institutional activities of local governments

The local governments, in performing the functions entrusted by the State, are subordinated to the Cabinet of Ministers, but in performing their autonomous functions they are under the supervision of the Cabinet. As to their institutional aspect, the local governments have the right to organise independently their internal structure and the activities of the institutions of the local government, therefore, in this respect, the local governments are under the supervision of the Cabinet. The Constitutional Court found that implementing the supervision of the institutional activities of local governments in the manner established in law fell within the competence of the Cabinet. [12.-13.]

The Constitutional Court noted that the activities of the public administration should comply with the general principles of law. The obligation of a local government to comply with the law and respect the rights in its activities follows from the principle of a state governed by the rule of law, whereas the State has the obligation to supervise the compliance of local governments, and, if necessary, to achieve it. The Minister for Environment Protection and Regional Development implements the supervision of the institutional activities of local governments with the help of the Ministry of Environment Protection and Regional Development subordinated to him. To ensure supervision of local governments, the Minister for Environment Protection and Regional Development has been granted a number of rights. [14.]

On the Minister's right to suspend the decisions of a local government

The Constitutional Court found that the Minister had the right to suspend the binding regulations of a local government and the norms of internal regulatory enactments; however, he had no right to suspend individual legal acts – administrative acts and individual administrative decisions, as well as political decisions of a local government. [16.]

The Constitutional Court recognised that it had the jurisdiction to determine, whether the decision by the Council of the local government that was suspended was a decision that the Minister had the right to suspend. [17.]

On the Minister's right to suspend the particular decision of the Council

To determine the kind of act is the Council's decision on establishing the standing committees of the local government and the composition thereof, the Constitutional Court, first of all, determined the legal status of a member of a local government, the Council and the procedure for establishing its committees. [18.]

On the legal status of a member of a local government

The Constitutional Court noted that a deputy of the local government was subject neither to his party nor any other organisations but only to his own consciousness of the interests of the inhabitants of the local government. Exercising of the member's rights in accordance with his own conscience cannot be verified by legal means; however, the deputy's conscience protects only the discretion in using his mandate but does not release the deputy from the obligation to abide by the law in adopting decisions. The principle of the mandate of free representation creates the pre-conditions that allow the deputy to adopt decisions in all good conscience in the interests of the inhabitants of the local government, agreeing with other deputies on the content of the decisions, and, thus, the Council would perform its functions in order to reach the aims of the local government. [19.]

At the same time, the office of a member of a local government is a public law office. The performance of the deputy's official duties and exercise of his rights is using the public power on behalf of the society. However, in accordance with the principle of the mandate of free representation, the deputy is not in a service relationship with the local government and is not especially subordinated to the local government. [19.]

The Constitutional Court found that a deputy's legal status is determined by the principle of the deputy's mandate of free representation. [19.]

On the subjective public rights of a local government deputy

The obligation of the Council of a local government to ensure to all deputies equal rights to participate in the Council's work follows from the obligation to represent the interests of the inhabitants of the local government. A deputy's right to participate, although is not absolute and does not give the right to a particular deputy to assume a particular office, means the right of each deputy to act, on equal grounds, in the standing committees, participate in the sittings of these committees and in the adoption of decisions. [20.]

The Constitutional Court found that concrete subjective public right followed from the deputy's right to participate, *inter alia*, the right to participate in the activities of a local government's committees – in sittings and in decision-making. [20.]

On the principle of proportionality

The principle of proportionality regulates not only the calculation of the local government election outcome. The Council of a local government has the obligation to abide by the principle of proportionality also in the future so that each deputy would be involved in its work to full extent. Since the Council of a local government functions through its standing committees, the principle of proportionality must be abided by also in organising the Council's work in committees and commissions. Derogation from proportionality cannot be justified by referring to a political decision. [21.]

On the legal nature of a Council's decision

A Council's decision is a legal act that applies legal norms, not an act that creates legal norms. It determines how the particular committees are composed of the deputies referred to in it. Thus, the Council's decision creates to each deputy that is referred to a certain subjective right to participate in the work of particular Council's committees: to participate in the committee's sittings, to speak during the sittings, to submit proposals and initiatives, to vote at the committees' sittings, and to ask questions. Thus, the Council's decision is an individual legal act. [22.]

Thus, the Constitutional Court found that the Council's decision was not a regulatory enactment and the Minister, by suspending it, had failed to abide by the first sentence of Section 49 (1) of the law "On Local Governments". [22.]

On compliance of the contested act with Article 1 of the *Satversme*

Upon establishing incompatibility of the contested order with the first sentence of Section 49 (1) of the law "On Local Governments", the Constitutional Court did not additionally examine its compliance with Article 1 of the *Satversme*. [23.]

On the mechanism for protecting a deputy's subjective public rights

The Constitutional Court noted that in a case, where the local government and its bodies violated deputy's subjective public rights, the principle of a state governed by the rule of law and Article 101 of the *Satversme* demanded a mechanism for protecting the deputy's rights that had been violated. [24.]

The Council of a local government is directly legitimized at the elections; however, the deputies of a local government have the mandate of free representation, therefore the disputes between the local government's Council and the deputies cannot be resolved at a hierarchically higher institution. [25.2.]

The Constitutional Court noted that a dispute between a deputy of a local government and the Council or its body regarding the exercise of the subjective public rights of a particular deputy is a public law dispute and follows from the actions taken by the Council of the local government or its bodies in the field of executive power. [25.2.]

Hence, the Constitutional Court concluded that the examination of the violation of a local government Council's deputy's subjective public rights, on the basis of an application by the deputy, should be performed by an administrative court. [25.2.]

On the date as of which the contested act becomes invalid

The Constitutional Court found that the contested order that the Minister had issued without abiding by the competence granted to him in the first sentence of Section 49(1) of the law “On Local Governments” had to be recognised as being unlawful and invalid as of the date when it was issued. [26.]

The Constitutional Court held:

to recognise the Order of 1 August 2017 by the Minister for the Environmental Protection and Regional Development No. 1-13/6038 “On suspending Para 1, 3, 4 and 5 of the decision of 16 June 2017 by the Salaspils Regional Council “On Establishment of the Standing Regional Committees and Election of Members thereof” (Minutes No. 12, § 4)” as being incompatible with the first sentence of Section 49 (1) of the law “On Local Governments” and invalid as of the date it was issued.

The judgement by the Constitutional Court is final and is not subject to appeal, it shall enter into force on the day of its publication.

The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/11/2017-32-05_Spriedums.pdf#search=2017-32-05

The press release was prepared with the aim to facilitate understanding of the cases heard by the Constitutional Court. It shall not be regarded as part of the ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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