Satversmes tiesa

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The merger of Ikšķile Municipality and Ogre Region complies with the Constitution; the inclusion of Skulte Parish in Saulkrasti Region does not

On 12 March 2021, the Constitutional Court passed a judgment in case No 2020-37-0106 "On compliance of sub-paragraphs 28.2, 28.19 and 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas with Articles 1 and 101 of the Constitution of the Republic of Latvia, Article 4(3), (6) and Article 5 of the European Charter of Local Self-Government".

Contested Provisions

- Sub-paragraph 28.2 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas provides that the town of Ikšķile is part of Ogre Region, while sub-paragraph 28.2 of the Annex provides that Tīnūži Parish is part of Ogre Region. Sub-paragraph 35.4 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas provides that Skulte Parish is part of Saulkrasti Region (hereinafter jointly referred to as the contested provisions).

Provisions of Superior Legal Force

- Article 1 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution):
  "Latvia is an independent democratic republic".

- Article 101 of the Constitution:
  "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.

Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language."

- Part 3 of Article 4 – "Scope of local self-government" – of the European Charter of Local Self-Government (hereinafter – the Charter):
"Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy."

- Part 6 of Article 4 – "Scope of local self-government" – of the Charter:
"Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

- Article 5 "Protection of local authority boundaries" of the Charter:
"Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute."

Facts of the Case

The case combines two cases, which were initiated on the basis of applications by the Limbaži Regional Council and the Ikšķile Regional Council. On 10 June 2020, the *Saeima* adopted the Law on Administrative Territories and Populated Areas. Administrative territories, their administrative centres and units of territorial division are determined in the Annex to the Law. According to sub-paragraphs 28.2 and 28.19 of the Annex, the town of Ikšķile and Tīnūži Parish are part of Ogre Region. In its turn, sub-paragraph 35.4 of the Annex provides that Skulte Parish is part of Saulkrasti Region.

The Ikšķile Regional Council held that Ikšķile Municipality had been joined to Ogre Region without properly considering the possibility of retaining it as an independent self-government or, if that was impossible, of joining it to Salaspils Region. In adopting the contested provisions, the *Saeima*, allegedly, had violated the principles of good legislation and self-government, had not observed the principle of subsidiarity, and had failed to duly consult with the Ikšķile Regional Council and the residents of the region. It was alleged that the contested provisions were incompatible with Article 1 and Article 101 of the Constitution, as well as Article 4(3), Article 4(6) and Article 5 of the Charter.

The Limbaži Regional Council noted that the boundary of Limbaži local government's administrative territory had been changed by the contested provision, dividing off Skulte Parish **from** Limbaži Region and joining it to the newly established Saulkrasti Region. The Council pointed out that, in changing the boundaries of the administrative territory, the opinion of Limbaži Region's community had not been inquired into. The Limbaži Regional Council held that the contested provision was obviously violating the principles of good legislation, self-governance, and proportionality. It was alleged that the contested provision was incompatible with Article 1, the first part of Article 101 of the Constitution, as well as Article 4(6) and Article 5 of the Charter.

The Court's Findings

On the principle of subsidiarity

The Constitutional Court found that the provisions contested in the case under consideration did not provide for reallocation of functions between a local government and the central authority and, consequently, did not touch upon the subsidiarity principle. Therefore, the Constitutional Court terminated the legal proceedings with regard to the compatibility of the contested provisions with Article 4(3) of the Charter, which enshrines the subsidiarity principle. [20.2]

On the appropriate way of evaluating the constitutionality of the contested provisions

The Constitutional Court determined that, in examining whether the legal provisions related to the administrative territorial reform complied with the provisions of superior legal force, it would evaluate the legal aspects of the said reform. [19]

To evaluate the compliance of the contested provisions, the Constitutional Court had to find out, firstly, whether the contested provisions had been drafted and adopted in a proper procedure and, secondly, whether the legislator had not acted arbitrarily. The Constitutional Court evaluated the compliance of the contested provisions with Article 1 and Article 101 of the Constitution and Article 4(6) and Article 5 of the Charter in reference to one another. [21.3]

On whether the contested provisions had been drafted and adopted in a proper procedure

In evaluating the procedure in which the contested provisions had been drafted and adopted, the Constitutional Court reviewed, firstly, whether consultation

with the respective local authorities during the period of drafting and consideration of those provisions had been carried out in accordance with the relevant regulations and, secondly, whether the contested provisions had been considered and adopted by the *Saeima* in accordance with the relevant regulations. [22]

On whether consultation with the respective local governments during the period of drafting and consideration of the contested provisions had been carried out in accordance with the relevant regulations

To evaluate whether consultation with the respective local governments during the period of drafting and consideration of the contested provisions had been carried out in accordance with the relevant regulations, the Constitutional Court had to find out: 1) whether the local council had had a possibility to prepare its opinion, having also found out the opinion of the residents of the respective administrative territory, and to submit to the responsible state authorities its proposals and objections regarding the planned reform; 2) whether the time allowed for this had been reasonable; 3) whether the local governments' proposals and objections had been given consideration. [23.2]

The Constitutional Court concluded that the residents of Ikšķile Municipality and Limbaži Region had had a possibility to prepare their opinion regarding the planned solution for administrative-territorial division within a reasonable period and to submit proposals and objections to the responsible state authorities, and that the proposals and objections of both the Limbaži regional government and the Ikšķile regional government had been evaluated in the process of consultation. [23.4, 23.5, 23.6]

On whether the contested provisions had been considered and adopted by the *Saeima* in accordance with the relevant regulations

To find out whether the consideration and adoption of the contested provisions in the *Saeima* had been in accordance with the relevant regulations, the Constitutional Court had to examine the issues related, firstly, to the establishment of the Administrative-Territorial Reform Committee of the *Saeima* and to the passing on of the draft "Law on Administrative Territories and Populated Areas" (hereinafter -– the Draft Law) to that Committee, and, secondly, to the procedure for remote sittings of the *Saeima* on the *e-Saeima* platform.

The Constitutional Court concluded that the *Saeima* had been entitled to establish the Administrative-Territorial Reform Committee (hereinafter – the Committee) and to appoint it as the committee in charge of the Draft Law, as the majority of the *Saeima* had considered this decision to be necessary and practicable. Even though the Committee had not been established in accordance with the principle of proportional representation, its composition still reflected

the majority of the *Saeima*, and the parliamentary opposition was represented in it. Thus, the *Saeima* had also been entitled to establish the Committee based on the equal representation principle. Regulations do not prohibit from simultaneously holding the office of a parliamentary secretary and that of the head of the *Saeima*'s committee. [24.1.1, 24.1.2, 24.1.3]

The Constitutional Court concluded that, in establishing the Administrative-Territorial Reform Committee and passing the Draft Law on to it, the *Saeima* had been acting in line with the relevant regulations. [24.1.3]

The Constitutional Court noted that the key issue in the case under consideration was not about the place where the *Saeima*'s sitting was held but about the compliance of the procedure of that sitting with legal provisions. The arguments concerning the *Saeima*'s sitting being held on *e-Saeima* platform are essentially not about the place where the sitting was held, but about the procedure of that sitting, in other words, about the possibilities of implementing a democratic process on the *e-Saeima* platform. [24.2.1]

To evaluate whether the sittings of the *Saeima* in which the contested provisions had been adopted had been held in accordance with regulations, the Constitutional Court had to find out: 1) whether the procedural arrangements for holding the *Saeima*'s sittings on the *e-Saeima* platform had been put in place and known to all Members; 2) whether the principle of openness of the *Saeima*'s sitting had been observed in the sittings held on the *e-Saeima* platform; 3) whether, in considering the Draft Law in the third reading and adopting the Law on Administrative Territories on the *e-Saeima* platform, the Members had been able to exercise all their rights in accordance with the Constitution and the *Saeima*'s Rules of Procedure. [24.2.1]

The Constitutional Court concluded that the procedural arrangements for holding the Saeima's sittings on the *e-Saeima* platform had been put in place and known to all Members. The principle of openness of the *Saeima*'s sitting had been observed in the sitting in which the Draft Law had been considered and passed. In the course of considering the Draft Law in the third reading and adopting the Law on Administrative Territories on the *e-Saeima* platform, the Members were guaranteed all the rights provided for in the Constitution and the *Saeima*'s Rules of Procedure. [24.2.2, 24.2.3, 24.2.4]

Hence, the consideration and adoption of the contested provisions in the *Saeima* were in accordance with the relevant regulations. [24.2.4]

Having evaluated the overall process of drafting and consideration of the contested provisions, the Constitutional Court concluded that consultation with the respective local governments had been carried out in accordance with the relevant regulations. [23.7]

<u>On whether the legislator had not acted arbitrarily</u>

To evaluate whether the legislator, in adopting the contested provisions, had not acted arbitrarily, the Constitutional Court had to find out: 1) whether the objective of the reform had been defined and whether it was aimed at public benefit; 2) whether the criteria at the basis of the reform were aimed at achieving the objective of the reform; 3) whether, in adopting the contested provisions, the legislator had taken into account the objective of the reform and the criteria for achieving it; 4) whether the legislator had weighed up the interests of the local community concerned, that is, the advantages and drawbacks of the particular solution for administrative-territorial division, including whether, in adopting he respective provisions, the legislator had respected the local community's right to democratic participation. [25]

On whether the objective of the reform had been defined and whether it was aimed at the public good

The Constitutional Court observed that, according to the principle of good governance, it is the obligation of the state to continuously review and, if necessary, improve the governance of the state and the system of state administration to ensure that it functions as effectively as possible. The objective of the administrative territorial reform, which is to remove the deficiencies found, accords with the common interests of the whole Latvian society. Thus, the objective of the administrative territorial reform is aimed at the common good of society. [26.4]

On whether the criteria at the basis of the reform are aimed at achieving its objective

The Constitutional Court noted that the reform criteria were aimed at enabling every local government to perform its autonomous functions more effectively. A better and more effective local governance, as well as commensurate costs of the services provided to the residents of local governments, are for the common good of society. The conclusions on the basis of which the criteria were formulated follow from various local and international studies on the situation in Latvia and are not obviously incorrect. Therefore, the Constitutional Court concluded that the criteria at the basis of the administrative-territorial reform were aimed at achieving the objective of the reform. [27]

On whether the legislator, in adopting the contested provision, had taken into account the objective of the reform and the criteria for achieving that objective

Considering the substantiality doctrine and the principles of parliamentary democracy, as well as the legislator's freedom of evaluation in deciding on

matters related to administrative territorial division, in exceptional circumstances the *Saeima* may take a decision different from what the Cabinet proposed when presenting the respective draft law. The Constitutional Court concluded that, in exceptional circumstances, the *Saeima* may depart from the set reform criteria if such departure is based on rational considerations and is in line with the objective of the reform. [28]

The Constitutional Court noted that the legislator, in making decisions related to the administrative-territorial reform, has to balance different interests of particular local governments and the common interests of society, but it has no obligation to evaluate the compliance of such decisions with the principle of proportionality as understood in the context of imposing restrictions on fundamental rights. [28]

On the provision contested by the Limbaži Regional Council

The question whether, in adopting the provision contested by the Limbaži Regional Council, the legislator had taken into account the objective of the reform and the criteria for achieving it is also connected with the creation of the new Saulkrasti Region. The territory of Limbaži Region includes a development centre of regional or national significance according to *Latvia 2030* strategy – Limbaži, whereas the town of Saulkrasti has not been defined as such a centre in the state development programming documents. This means that the legislator, by separating Skulte Parish off from the existing Limbaži Region and making it part of the new Saulkrasti Region, breached the criteria laid at the basis of the reform. Therefore, the Constitutional Court concluded that, in adopting sub-paragraph 35.4 of the Annex to the Law on Administrative Territories, the legislator had acted arbitrarily. [28.1]

On the provisions contested by the Ikšķile Regional Council

The Constitutional Court concluded that the decision on whether Ikšķile Municipality should be made part of Salaspils Region or Ogre Region, if in both cases the criteria at the basis of the reform would be observed, depended on the political choices, which the Constitutional Court may not review. Conversely, retaining Ikšķile Municipality as a separate administrative territory would not meet one of the criteria laid at the basis of the reform, namely, that a regional centre is also a development centre of regional or national significance. The fact that Ikšķile Municipality, thanks to its financial situation, is able to function without a grant from the fund for the equalisation of local government finances, as well as the prospects of becoming a development centre have no decisive legal significance, as the legislator had not defined these factors as criteria for establishing regions. Thus, the Constitutional Court concluded that, in deciding to make the existing Ikšķile Municipality part of the new Ogre Region, the

legislator had taken into account the objective and the criteria of the reform. [28.2]

> On whether the legislator had weighed up the interests of the local community concerned, that is, the advantages and drawbacks of the particular solution for administrative-territorial division, including whether, in adopting the respective provisions, the legislator had respected the local community's right to democratic participation

The Constitutional Court noted that the active participation of the residents in local self-government is important in a democratic rule-of-law state. A reform must not be based solely on economic considerations and financial gain. The Constitutional Court had to examine whether the legislator, in implementing the reform in respect of making the local self-government of Ikšķile Municipality part of Ogre Region, had weighed up the interests of the local community and the advantages and drawbacks of the particular solution for administrative territorial division and respected the residents' right to democratic participation. [29]

The Constitutional Court concluded that, in adopting sub-paragraphs 28.2 and 28.19 of the Annex to the Law on Administrative Territories, the legislator had not acted arbitrarily. At the moment, when the reform is not yet completed, it is not possible to evaluate the citizens' right to democratic participation in the local governments newly established as a result of the reform. As concerns the local community of Ikšķile Municipality, there is no reason to conclude that the legislator acted arbitrarily. [29.2]

The Constitutional Court ruled:

1. To terminate the legal proceedings in the case insofar as it concerns the compliance of subparagraphs 28.2, 28.19 and 35.4 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas with Article 4(3) of the European Charter of Local Self-Government.

2. To recognise subparagraph 35.4 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas as being compatible with Article 4(6) and Article 5 of the European Charter of Local Self-Government.

3. To recognise subparagraph 35.4 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas as being incompatible with Articles 1 and 101 of the Constitution of the Republic of Latvia.

4. To recognise subparagraphs 28.2 and 28.19 of Annex "Administrative Territories, their Administrative Centres and Units of Territorial Division" to the Law on Administrative Territories and Populated Areas as being compatible with Articles 1 and 101 of the Constitution of the Republic of Latvia and with Article 4(6) and Article 5 of the European Charter of Local Self-Government.

The judgment of the Constitutional Court is final and not subject to appeal; the judgment enters into force on the day it is published.

The text of the judgment is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-37-0106_spriedums.pdf

Up-to-date information on the cases initiated in the Constitutional Court regarding the administrative territorial reform is available here: https://www.satv.tiesa.gov.lv/press-release/satversmes-tiesa-par-administrativi-teritorialo-reformu-lidz-sim-ierosinajusi-19-lietas-aktualizets-08-01-2021/

This release has been prepared to inform the public about the work done by the Constitutional Court. More detailed information on current issues, cases initiated and decided by the Constitutional Court is available on the website of the Constitutional Court. You are also invited to follow the information on the Court's *Twitter* account @Satv_tiesa and *YouTube* channel.

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