



Satversmes tiesa

Press release

Case No. 2021-23-01

31.03.2022

The Regulation Establishing a Restriction on the Participation of Arrested Persons in Election of Local Government Councils is Unconstitutional

On 30 March 2022, the Constitutional Court adopted a judgement in Case No 2021-23-01 “On Compliance of Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils with Article 101 of the Satversme of the Republic of Latvia”.

THE CONTESTED PROVISIONS

Section 32, Paragraph Four of the Law on the Election of Local Government Councils states as follows: “Voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.”

Paragraph Eight of this Law states as follows: “For the suspects, accused or defendants who are subject to arrest as the security measure, voting shall be organised at the location of such persons in accordance with the procedures laid down in Paragraphs one and four of this Section” (hereinafter collectively referred to as – the contested norms).

NORM WITH A HIGHER LEGAL FORCE

- Article 101, Paragraph One of the Satversme of the Republic of Latvia (hereinafter referred to as – the Satversme):
“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.”

First sentence of Article 101, Paragraph Two of the Satversme: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia.”

THE FACTS OF THE CASE

The case was initiated on the basis of a constitutional complaint of Mr Aivars Lembergs (hereinafter referred to as – the Applicant).

The Applicant was imposed custody as a restraint measure, and, on 5 June 2021, during the election of local government councils, he was in Riga Central Prison. The applicant was registered on the electoral roll of the State City of Ventspils, and his electoral district was the municipality of that state city. The Applicant wanted to vote in the elections of local government. The contested norms prevented him from doing so, since location of the Applicant was outside the territory of the electoral district of the State City of Ventspils.

The Applicant considered that, in this way, his right to participate in the election of local government councils laid down in Article 101 of the Satversme were infringed.

CONCLUSIONS OF THE COURT

On termination of the proceedings

The Constitutional Court rejected the request of the Saeima to terminate the proceedings, because the infringement of the Applicant's fundamental rights resulted directly from the contested norms and he had no real and effective possibilities to defend his fundamental rights, the use of which would be a precondition for fulfilment of the requirements of Section 19², Paragraph Two of the Constitutional Court Law. [14.1, 14.2]

On extending the boundaries of the proceedings

Taking into account the system of the Law on the Election of Local Government Councils, the Constitutional Court concluded that all the persons referred to in Section 32, Paragraph Eight of this Law – suspects, accused and defendants who are imposed custody as a restraint measure – irrespective of the criminal procedural status of these persons, are subject to the same procedure of participation in election of local government councils, as well as the restriction contained in the contested norms. [16.2]

The Constitutional Court concluded that the materials contained in the case were sufficient to assess the constitutionality of the contested norms with regard to all the persons falling within the scope of the contested norms and being imposed custody as a restraint measure. [16.2]

As to how the constitutionality of the contested norms should be assessed

Both contested norms regulate the procedure by which the persons being imposed custody as a restraint measure participate in election of local government councils, and are thus closely interrelated. Therefore, the Constitutional Court assessed the constitutionality of these norms as a common legal framework. [16.2]

On the scope of Article 101 of the Constitution

The Constitutional Court recognised that the ways of exercising the right to participate in the activities of local governments contained in Article 101 of the Satversme may not be formal. They must be effective, because only effective participation is consistent with the principle of popular sovereignty. Consequently, this Article establishes the obligation of the state not only to guarantee the citizen the right to participate in election of local government, but also to create preconditions for the citizen to participate in the activities of the state and local governments. [17]

The Constitutional Court concluded that a citizen of Latvia, who was imposed custody as a restraint measure, was a fully fledged citizen of Latvia within the meaning of the first sentence of Article 101, Paragraph Two of the Satversme and had the right to elect a municipal council. [17.2]

As to whether the contested norms restrict the fundamental right established in the first sentence of Article 101, Paragraphs One and Two of the Satversme

The Constitutional Court concluded that the contested norms resulted in a restriction on the fundamental rights contained in Article 101, Paragraph One, and first sentence of Paragraph Two of the Satversme for suspects, accused and defendants being imposed custody as a restraint measure and located in a place of incarceration outside the territory of the electoral district in the electoral roll of which these persons are registered. [17.3]

As to whether the restriction on fundamental rights contained in the contested norms is stipulated by law

The Constitutional Court recognised that the contested norms had been proclaimed and made available in compliance with the requirements of legislative instruments, as well as formulated with sufficient clarity and did not find any significant infringements of the legislative procedure in the process of adoption of the restriction on fundamental rights established by the contested norms. [19.1, 19.2]

The Constitutional Court concluded that the restriction on fundamental rights contained in the contested norms had been established by a law adopted in due procedure. [19.3]

On the legitimate aim of the restriction on fundamental rights

The Constitutional Court recognised that the legislator had not indicated and substantiated the legitimate aim of the restriction established by the contested norms. According to the Constitutional Court, the restriction on fundamental rights established by the contested norms does not protect any important public interests. [20.1]

The Constitutional Court emphasised that in a democratic state governed by the rule of law, a situation in which the right of citizens to vote in election of local government councils is restricted without a legitimate aim is not permissible. The right to vote is recognised as the key political right, ensuring the representation of citizens in national and local governments, and is one of the cornerstones of a democratic state. Every citizen's right to vote matters. Every citizen's vote is a sign of respect and civic responsibility towards their country. It is essential for every citizen to be able to exercise his or her right to vote, and the state has a duty to ensure that the right to participate in election of local government councils is practicable without unjustified restrictions. [20.3]

The Constitutional Court concluded that since the restriction on fundamental rights established in the contested norms did not have a legitimate aim, it did not comply with Article 101, Paragraph One and the first sentence of Paragraph Two of the Satversme. [20.3]

On the right of persons to vote in election of local government councils who, due to their state of health, cannot attend the polling stations

The Constitutional Court concluded that Section 32, Paragraph Four of the Law on the Election of Local Government Councils also restricted the right of persons to vote in the election of local government councils who, due to their health condition, cannot attend the polling stations. Consequently, the Saeima needs to consider the constitutionality of this restriction also with regard to those persons who, due to their health condition, cannot attend the polling stations. [21]

On the moment of expiry of the legal norms

With regard to the Applicant, the contested norms, insofar as they denied him from participation in the election of local government councils, should be recognised as being null and void as of the moment of occurrence of infringement of his fundamental rights. Whereas, with regard to other persons –

as being null and void as of the date of publication of the Constitutional Court's Judgement. [22]

The Constitutional Court ruled the following:

1 To recognise Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils, insofar as these norms deny suspects, accused or defendants who being imposed custody as a restraint measure from voting in the election of local government councils, if these persons are in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which they are registered, as being incompatible with Article 101, Paragraph One and the first sentence of Paragraph Two of the Satversme of the Republic of Latvia.

2 With regard to Mr Aivars Lembergs – to recognise Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils, insofar as these norms deny him from voting in the election of local government councils, if he is in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which he is registered, as being incompatible with Article 101, Paragraph One and the first sentence of Paragraph Two of the Satversme of the Republic of Latvia as of the moment of occurrence of infringement of his fundamental rights.

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

Text of the Judgement is available on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/06/2021-23-01_Spriedums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. **More detailed information on the latest developments, cases opened and adjudicated by the Constitutional Court is available on the [website](#) of the Constitutional Court.** We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](#) and the Court's *YouTube* [channel](#).

Zanda Meinarte

The Constitutional Court's
Public Relations Specialist

Zanda.Meinarte@satv.tiesa.gov.lv
67830759, 26393803