



JUDGE OF THE CONSTITUTIONAL COURT

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Constitutional Court judge

Gunārs Kusiņš

DISSENTING OPINION

Riga, 21 December 2023

in Case No. 2022-41-01

“On Compliance of Section 4(2), Section 5(2) and (5) and Section 8(1) of the Law on the Prohibition of Exhibiting Items Glorifying the Soviet and Nazi Regimes and Their Dismantling in the Territory of the Republic of Latvia with Article 1 and Article 101 of the Constitution of the Republic of Latvia”.

1 On 7 December 2023 the Constitutional Court adopted a judgment in Case No 2022-41-01 “On Compliance of Section 4(2), Section 5(2) and (5) and Section 8(1) of the Law "On the Prohibition of Exhibiting Objects Glorifying the Soviet and Nazi Regimes and the Dismantling Thereof in the Territory of the Republic of Latvia" with Article 1 and Article 101 of the Constitution of the Republic of Latvia” (hereinafter – the Judgment), in which it ruled to declare that the second paragraph of Section 4, the second and fifth paragraphs of Section 5 and the first paragraph of Section 8 of the Law "On the Prohibition of Exhibiting Objects Glorifying the Soviet and Nazi Regimes and the Dismantling Thereof in the Territory of the Republic of Latvia" (hereinafter – the Law) comply with Article 1 and the first sentence of the second paragraph of Article 101 of the Constitution of the Republic of Latvia (hereinafter – the Constitution) .

I fully agree with the finding in the Judgment that the second paragraph of Section 4 and the second and fifth paragraphs of Section 5 of the Law comply with Article 1 and the first sentence of the second paragraph of Article 101 of the Constitution. **However, I cannot agree with the conclusion of the majority of the Constitutional Court on compliance of the first paragraph Section 8 of the Law with Article 1 and the first sentence of the second paragraph of Article 101 of the Constitution.**

While arguing my opinion, I will use the abbreviations used in the Judgment.

2 I believe that the presence of the objects defined in the Law in the public open space has for a long time created a situation incompatible with the principle of the continuity of the Latvian State, as well as incomprehensible to the public, and the State has long been obliged to plan the necessary funds for the dismantling of such objects whose presence in the public open space is incompatible with the principle of the continuity of the Latvian State. However, this was not done for a long time.

3 The Saeima adopted the Law after the law “On the State Budget for Year 2022” had already been adopted and entered into force. The budget of the Applicant – the Daugavpils City – was also adopted and entered into force.

The Constitutional Court has recognised that when adopting a law or another decision related to the expenditure from the State Treasury, the Saeima must take into account the existing budget, and "if the Saeima adopts a decision related to expenditure unforeseen in the budget, the decision must also provide for the means to cover such expenditure" (*see paragraph 1 of the conclusion part of the judgment of the Constitutional Court in Case No 01-05(98) of 27 November 1998*).

I believe that the second paragraph of Article 66 of the Constitution and the principle of financial autonomy of local governments form an internally coherent system and impose essentially similar requirements. That is, if, after the adoption of the state budget, a law is adopted whose implementation involves unforeseen expenditure, the Saeima must also determine the means to cover such expenditure. Similarly, any task assigned to a local government by the legislator must be accompanied by an adequate source of funding or revenue to cover the additional costs to the budget of the local government.

4 When assessing the compliance of Section 8(1) of the Law with Article 1 of the Constitution and the first sentence of Article 101(2) of the Constitution, the Constitutional Court rightly concluded that the distribution of the costs of the obligation to dismantle objects, which provides for financing the dismantling of objects in equal amounts from the State and local government budget funds, affects the financial autonomy of local governments by creating previously unforeseen expenses in the 2022 budget of the local government in whose territory the object to be dismantled is located (*see paragraph 11 of the Judgment*). At the same time, the majority of the Constitutional Court also indicated three factors – the principle of continuity of the State underlying the obligation to dismantle the objects, the unique nature of this obligation and the low financial burden imposed on the Daugavpils City local government – which, taken together, allowed to conclude that adequate funding was available to the local government.

In my view, these three factors are not sufficient to conclude that adequate funding was available to the local government.

5 There can be no doubt that the principle of continuity of the State imposes an obligation on the State, including local governments. However, as it follows from the case materials, during the examination of the contested norms it was established that no financial resources have been foreseen in the State budget for the fulfilment of such dismantling obligation included in the draft law by the established deadline – no later than 15 November 2022. In particular, at the meeting of the Saeima Education, Culture and Science Committee, a representative of the Ministry of Finance pointed out that the state budget does not provide for such funding. At the same time, in the Minister of Finance's comment on the draft law, referring to the obligation of the Saeima under Article 66 of the Constitution to provide for the necessary financial resources, it is also pointed out that there is some undistributed funding in the programme 02.00.00 “Contingency funds” of the Department No. 74 “Financing to Be Redivided During the Implementation Process of the Annual State Budget” of the law “On the State Budget for Year 2022”. It can therefore be concluded that the Ministry of Finance had indicated a possible source for such expenditures.

During the implementation of the Law, the State covered these expenses from the contingency funds (*see Para 10 of the Cabinet of Ministers Regulation No 516 of 16 August 2022 "Procedure for Allocation and Use of State Budget*

Funds, as well as for Accounting and Use of Donations by Natural and Legal Persons for the Dismantling of Objects Glorifying the Soviet and Nazi Regimes in the Territory of the Republic of Latvia). Therefore, the share of the dismantling costs covered by the State was financed from the unallocated funds of the programme 02.00.00 “Contingency funds”.

According to the annotation of the draft law, it was planned that the dismantling of the objects was to be covered by the contingency funds of the local governments. The budget of the Daugavpils City local government for 2022 did not include any contingency funding (*see Daugavpils City Council Binding Regulation No 8 of 28 January 2022 "On the Daugavpils City Local Government Budget for Year 2022"*).

However, the majority of the Constitutional Court held that the funds which the Applicant had already planned for the maintenance and improvement of the urban environment and which, moreover, were supplemented by co-financing from the State and private individuals, should have been used for the dismantling of the objects.

Considering that the second part of Article 66 of the Constitution and the principle of financial autonomy of local governments form an internally coherent system, I cannot agree with such an approach, which treats differently the procedure for covering the expenses required from the State budget and the procedure for covering the expenses required from the local government budget.

The majority of the Constitutional Court pointed to the one-off nature of this obligation as the second factor which, in conjunction with others, allowed to conclude that adequate funding was available to the local authority. I believe that neither Article 66(2) of the Constitution nor the principle of financial autonomy of a local authority can be interpreted in such a way that they do not apply to a one-off obligation. The Charter also does not allow the withdrawal of adequate funding or a source of income in such cases.

As the third factor of compliance of the financing, the majority of the Constitutional Court pointed out the low financial burden, emphasising that the costs of dismantling the objects, which the Daugavpils City local government had to cover from its own resources, were equivalent to 0.018 percent of the previously planned expenditure or 0.02 percent of the planned income.

I can agree with the majority of the Constitutional Court that a minor financial impact does not automatically violate the principle of financial

autonomy of local governments, but I cannot agree that the percentage of previously planned expenditure method or the percentage of planned income method could be used to assess such impact and financial burden. The principle of financial autonomy applies equally to all local governments, and this principle should not be understood as allowing the non-compensation of expenditure to those local governments that have previously had higher planned expenditure or income and, consequently, possibly a lower percentage impact of the newly assigned task.

In such circumstances, I cannot agree with the majority of the Constitutional Court that the sum of the three factors indicated in the Judgment allows to conclude that adequate funding was available to the local government, and I consider that in the given circumstances the first paragraph of Section 8 of the Law is incompatible with Article 1 and the first sentence of the second paragraph of Article 101 of the Constitution.

Constitutional Court judge

Gunārs Kusiņš