



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

SEPARATE OPINION
of Jānis Nemanis,
Judge of the Constitutional Court,
in Riga on 22 November 2023
in Case No. 2022-17-01

“On Compliance of Para 1 and Para 3 of Section 4 (3), of the Fifth and the Ninth Part of Section 4, Section 7 (1¹), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 11 (2) of the Law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law with Article 1 and the First Sentence of the Second Part of Article 101 of the Constitution of the Republic of Latvia”.

On 9 November 2023, the Constitutional Court in its judgement in case No. 2022-17-01 has recognised Para 1 and Para 3 of Section 4 (3), of the fifth and the ninth part of Section 4, Section 7 (1¹), Sub-para 1 and Sub-para 2 of Para 16 of the Transitional Provisions of the Law on Ports, Section 11 (2) of the law of 10 February 2022 “Amendments to the Law on Ports”, as well as Section 4 (1) of the Free Port of Ventspils Law as being compatible with Article 1 and the first sentence in the second part of Article 101 of the Constitution of the Republic of Latvia.

In Para 19.3. of the judgement, the Constitutional Court concluded that performing the management function for the Port of Rīga and the Port of Ventspils was not and is not linked to any of the local government’s autonomous competencies, determined in law.

In Para 20 of the judgement, the Constitutional Court found that the contested provisions did not affect the finances of local governments due to the following reasons:

1) the financial resources, which historically have formed as the result of an agreement, concluded by the Council of Ventspils local government, cannot be regarded as such sources of financing, established by law, which have been transferred for the exercise of a local government's autonomous competences (*see Para 20.1. of the judgement*);

2) the actual situation where the common hydrotechnical constructions of the Port of Ventspils, including the berths, have been retained in the local government's possession, does not give legal grounds for the local government of Ventspils to consider that the berths, which are necessary for fulfilling the functions of a port, should be kept in the local government's possession and used as a source of financing for exercising the autonomous competences of a local government (*see Para 20.2. of the judgement*);

3) the contested provisions neither determine nor change the territory of the Port of Rīga and the Port of Ventspils, and what this port territory should be like does not follow from them, i.e., how large the part of land should be within the territory of the port and what kind of properties owned by the State and local government should be included in it. Thus, the revenue that a local government might gain from alienating immovable property cannot be regarded as such source of financing, established in law, that would ensure exercising of the local government's autonomous competences (*see Para 20.3. of the judgement*);

4) the legislator had not provided that the revenue from the sources of financing, envisaged for the port authority, should be used for exercising the autonomous competences of a local government; hence, the revenue that a capital company might gain from port management cannot be recognised as being such source of financing that has been determined by law for exercising the autonomous competences of a local government (*see Para 20.4. of the judgement*).

It follows from these conclusions that the reform of port management, determined by the contested provisions, does not pertain at all to the autonomous competence of local

governments and financial autonomy or the principle of self-government, which is found in Article 1 and the first sentence in the second part of Article 101 of the Constitution.

If the content of a legal provision with lower legal force does not pertain to the content of a superior legal provision, i.e., a collision of the legal provisions does not occur, then it is impossible to conclude whether these legal provisions are or are not mutually contradictory. In other words, if the contested provisions do not pertain at all to the content of Article 1 and the first sentence in the second part of Article 101 of the Constitution then a conclusion regarding compliance of the contested provisions with Article 1 and the first sentence in the second part of Article 101 of the Constitution cannot be drawn at all.

A situation like this complies with the case, referred to in Para 6 of Section 29 (1) of the Constitutional Court Law, where legal proceedings in the case cannot be continued and should be terminated.

It needs to be noted that the Constitutional Court has acted like that before. In the case regarding the compliance of the second part of Section 7 of the law “On Public Transport Services” with Articles 2, 3 and the first, third and fourth part of Article 4 of the European Charter of Local Self-Governments of October 15, 1985, the Court concluded that the contested provision did not concern the autonomous competence of the Riga District Council, hence, it terminated the legal proceedings (*see Decision by the Constitutional Court of 16 April 2008 on Terminating Legal Proceedings in Case No.2007-21-01, Para 18 and the Substantive Part*).

I am of the opinion that, in the present case, the Constitutional Court had the grounds for acting in the same way.

Finally, the Constitutional Court did not have to analyse separately, in Para 21 of the judgement, compliance with the requirement to consult because the Constitutional Court, previously in Para 18.2.3. of the judgement, had concluded that the requirement to consult, which followed from the sixth part of Article 4 of the European Charter of Local Self-Government, was applicable in those cases that affected the legal status of a local government, the scope of competences, functions transferred to it and of the authorisation

of a local government or its financial autonomy (*see also the reference to explanation of the Charter, included in Para 18.2.3. of the judgement*).

Neither can consulting be regarded as a separate principle that guarantees the existence of local governments (*see Para 18.2. judgement*), it is a requirements that follows from the Charter and must be complied with if the State's decisions affect the local government's rights.

Judge

J. Neimanis