



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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**SEPARATE OPINION**  
**of Justice of the Constitutional Court**  
**Jānis Neimanis**  
**in Riga on 28 December 2022**  
**in Case No. 2021-36-01**

**“On Compliance of Para 2 of Section 7<sup>1</sup> (1) of the Law on Financing Political Organisations (Parties) with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia”.**

The Constitutional Court decided to recognise Para 2 of Section 7<sup>1</sup> (1) of the Law on Financing Political Organisations (Parties) as being compatible with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia. It is recognised in the judgement that it is impossible to compare a political party, for which more than two per cent of electors have voted in the last *Saeima* election, with political parties, which participate only in local government elections, because the political parties, which participate in the *Saeima* election, are said to have different functions in creating sustainable politics and reinforcing democracy, the activities of these political parties is said to be aimed at determining the common aims of the State and directions of development.

I do not uphold the reasoning of the Constitutional Court’s judgement and the conclusion regarding the compliance of the contested provision with the equality principle.

Pursuant to the contested provision, those political parties, for which more than two per cent of electors have voted at the last *Saeima* election, are granted State budget financing in the amount of 0.1 per cent of the minimum monthly salary for each voted acquired at the last local government election within the calendar year. The State budget financing is not granted for each acquired vote to those political parties, which do not

participate in the *Saeima* election but do participate in the election of a local government council. Thus, it can be established that there are political parties, which, on the basis of a law, receive disbursement from the State budget for the votes acquired at the election of a local government council, and political parties, which do not receive such disbursement from the State budget for votes acquired at the election of a local government council. Contrary to the conclusion made by the Constitutional Court, in the context of State budget financing, political parties, for which more than two per cent of electors had voted during the last *Saeima* election, are comparable with the political parties, which participate only in the elections of a local government council, because not only one but several common elements with the actual case under review can be found.

The common elements of comparable groups are:

- 1) political parties;
- 2) participate in the elections of a local government council because they have submitted lists of candidates for the seats of local government councillors;
- 3) the candidates proposed by the political parties acquire votes at the election of a local government council.

The different element is whether the political party participates also in the *Saeima* election and acquires in it more than two per cent of votes. However, this element characterises the aim of differential treatment rather than substantiates the non-formation of comparable groups.

I am of the opinion that there were enough common elements of the comparable groups to continue testing compliance with the equality principle.

Contrary to the conclusions made by the Constitutional Court, the content of political parties' programmes (aims of local government or of national importance), division into territorial units (the party's activity in the territory of Latvia or in some local territories), as well as further activities of the elected candidates, whether they follow the party's programmes or already exercise the right to a free mandate, are not of decisive importance. Likewise, the impact of political parties, which have participated in the *Saeima* election, on the parliamentary democracy, the substance and significance of these political parties are meaningless in the context of determining comparable groups because, pursuant to the contested provision, the State budget resources are granted to a political party for each vote acquired exactly at the local government election. In the context of election of a local government council, all political parties, which submit lists of candidates for the council election, participate with equivalent competing

programmatic aims, *inter alia*, such that are linked to the local interests and needs of the particular local government. For example, the pre-election programmes of the list of candidates, submitted by all political parties for the election of the local government council of the Talsi Region on 5 June 2021, were aimed promoting economic activities, infrastructure, cultural and sports events, social services and public order in, exactly, Talsi Region (*see: 2021. gada 5. jūnija pašvaldību vēlēšanas. Talsu novads. Available: cvk.lv*).

Since all political parties, which participate in the local council elections and acquire votes, are comparable, the Constitutional Court had to continue testing the compliance with the equality principle in the granting of State budget financing to political parties and to assess whether the difference established in the law was justified and reasoned.

The *Saeima* pointed out that the differences in the financing of political parties were based on the aim of supporting those political parties, which acquire at least two per cent of votes specifically at the *Saeima* elections. Allegedly, this reinforces the democratic state and protects public welfare.

The arguments expressed in the case regarding the importance of political parties, which participate in the *Saeima* election ( or on the so-called “national level”), the significance of the electors’ support, gained by these political parties, the importance of financing political parties *per se* are not important in the context of this case because the significance of these “national-level” political parties in parliamentary democracy is not contested, and they are reinforced already by receiving State budget financing for the votes acquired at the *Saeima* election; this part of the financing constitutes the greatest part of the State support. Likewise, it is not contested that financing of political parties from the State budget resources is important for their successful operation. The central issue to be analysed in the case was related to differences in the financing of political parties, why the political parties, which have obtained certain support in the *Saeima* election, should gain additional financial benefit for the votes acquired at the local council election, whereas the political parties, established by inhabitants of the local government, which, moreover, even may acquire representation at the local government council, should not.

In my opinion, Latvia is a democratic state governed by the rule of law, based on dignity and freedom vested in each person. Such a state is characterised by tolerance, pluralism and openness (*compare, see Judgement by the Constitutional Court of 27 May 2022 in Case No. 2021-34-01, Para 17*). Namely, various opinions and different systems of

values may exist in it. In such circumstances, organisation of society's life, in the framework of the *Satversme*, is ensured by democracy, which is founded, *inter alia*, on a person's free will, expressed in elections, and is based upon a compromise (*compare, see Judgement by the Constitutional Court of 23 September 2002 in Case No. 2002-08-01, and Decision of 27 May 2022 on Terminating Legal Proceedings in Case No. 2021-34-01, Para 18.4.*). The democracy principle applies also to local governments (*see, for example, Judgement by the Constitutional Court of 15 May 2020 in Case No. 2019-17-05, Para 13.1.*). The decision-making institution of the local government – the council – is elected by the respective local government's inhabitants with full rights in equal, direct, proportional elections by secret ballot (*see the first sentence in the second part of Article 101 of the Satversme and Section 1(1) of the Law on Election of Local Government Councils*). At the election of the local government council, inhabitants vote for the lists of candidates for the councillors' seats, which, on the basis of applications by a party, an alliance of parties or two or more parties who have not joined in an alliance, have been accepted by the local government's election commission (*see Section 15 (1), Section 20 (1) and Section 28 (3) of the Law on Election of Local Government Councils*). In other words – the lists of candidates for the election of a local government council are submitted, individually or collectively, by political parties. A political party is an organisation that has been established in order to engage in political activities, to participate in election campaigns, to nominate candidates for deputy positions, to participate, *inter alia*, in the election of local government councils, to implement the party programme with the intermediation of deputies, as well as to be involved in the establishment of public administrative bodies (*see Section 2 (1) of the Law on Political Parties*). Namely, it is an alliance of persons, the members of which share similar political views, has a certain ideology and the main aim for which is gaining political power, to exercise in the State in accordance with the aims and principles included in the party's programme (*see Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 19*). It is an important element of a democratic state because free expression of the people's opinion is inconceivable in the absence of a system of political parties, representing various opinions prevailing among the citizens of the state (*see Judgement by the Constitutional Court of 5 February 2015 in Case No. 2014-03-01, Para 20.1. and Para 20.2.*). It follows from the role of political parties in reinforcing both national- and regional-level democracy that the legal regulation on parties should be aimed at developing pluralistic political environment. Thus, actual possibilities to choose between parties' proposals are ensured to individuals (*see also European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights Guidelines on Political Party Regulation, 2<sup>nd</sup> ed., p. 17. Available: [venice.coe.int](http://venice.coe.int)*). It should be taken into account in determining, to which parties State budget financing may be granted. More

specifically – State budget financing should be granted on the basis of objective, fair and reasonable criteria (*see also Recommendation of the Council of Europe Committee of Ministers of 8 April 2003 to member states on common rules against corruption in the funding of political parties and electoral campaigns, p. 2. Available: rm.coe.int*).

The Constitutional Court points out in its Judgement that the participation and involvement of civil society in public governance is ensured by financing the parties that have gained certain support at the *Saeima* election (or “national-level parties”) and not financing the political parties of the local government’s inhabitants (or “regional-level parties”); the political parties, which participate in the *Saeima* elections, are said to perform different functions in developing sustainable politics and reinforcing democracy (*see Para 15.2. of the Judgement*). However, by the contested provision the State budget financing is, actually granted to a political party, which participates in the *Saeima* election and receives more than two per cent of votes, exactly for the votes gained at the election of a local government council, i.e., for such local-level programme of this party and its intended activities on the local government level, regarding which the Constitutional Court previously stated that the activities of political parties on that level were of minor importance “for reaching the aims of creating sustainable politics and reinforcing democracy”.

The *Saeima* noted that the aim of differential treatment was linked to the need to promote consolidation of political parties; several of the summoned state institutions also pointed to it. The “consolidation” of parties can be seen in reality, namely, that political parties of local government’s inhabitants now participate in the election of the local government council very rarely; mostly, because of the way financing of parties is organised, they have been forced to joint alliances of parties, represented in the *Saeima*, or disappear altogether. Depending upon the legal system of the state, political culture and the level of development of civil society, measures aimed at consolidation political parties on the national level may be important to prevent excessive political fragmentation and its impact on the stability of the government and effectiveness of its work, as well as to prevent, accordingly, decrease in public trust in the functioning of the system of political parties. However, such measures of general significance should not be linked to the outcomes at the local government council election of a political party, which participates in the *Saeima* election. Namely, although it might be important for the participants in the *Saeima* elections, i.e., parties, for the purpose of attracting members, educating the party members and the entire society, as well as for pre-election agitation to operate also in the territories of Latvia’s local governments, due to the limited and autonomous competence of a local government, participation in the election of a local government council is not decisive in reaching these aims. Since the parties, established by local

inhabitants, due to the territorially local nature of their activities are even unable to create the risk of excessive political fragmentation or instability of the ruling coalition in the national-level political environment, the impact of the possible consolidation of regional and national parties upon national-level democracy cannot be significant. However, the consequences of this process on democracy and political pluralism on the local government level are remarkable. The contested provision has made the receipt of State budget financing for votes acquired at the local government council election dependent upon a seemingly neutral criterion – relatively successful participation in the *Saeima* election. However, actually, this criterion demands inclusion of certain aims and ideology into the party's programme and, accordingly, sufficiently clear, serious, aligned and important expression of the political views of its members. I.e., to receive the State budget financing, the party's programme and, accordingly, the political views of its members should be directed not only at working in the local government and with issues related to its competence, but, actually, coercively, also at certain political aims on the national level. The granting of State budget financing only to those parties, which participate in and acquire votes at the *Saeima* election, causes a situation, where representatives of parties, established by the local government's inhabitants, with the aim of financing activities of their political party and actually maintaining it, join the *Saeima's* parties, although their political views may not coincide with the programme of the respective party. Whereas if the political party of the local government's inhabitants joins a political party, which participates in the *Saeima* election, members of the local inhabitant's political party, due to ideological differences with the *Saeima's* party, may leave this local government-level political party or stay in it only because of the financial support, thus levelling out the essence of the party and turning political association illusory. Moreover, a situation like this may demotivate electors from participation in the local government council election because they do not uphold the programmes of national parties, which have submitted the lists of candidates also at the election of the respective local government council. Namely, in the current situation, political pluralism and respect for the principle of democracy are being decreased on the local government level. Therefore, also the need to facilitate consolidation of parties "from top down" is not such an aim of the differential treatment, caused by the contested provision, that would fall within the area of protecting a democratic state order.

Finally, in a situation where the differential treatment manifests itself as granting the State budget financing to a group of persons, not granting this financing to another group of persons cannot be justified by the need to save State budget resources. Otherwise, the State could, in the name of a seemingly noble aim, grant arbitrarily State budget resources to any person and not grant them to other persons who are in similar and in accordance with certain criteria comparable circumstances in order to save budget

resources. A situation like this would be contrary to the meaning of the equality principle. Also in this particular case, the need to save State budget resources *per se* does not substantiate why State budget financing for the votes acquired at the local government council elections should be granted to the national parties but should not be granted to the local government level parties. Hence, in the particular case, the need to save State budget resources is not such an aim of the differential treatment, caused by the contested norm, that would fall within the scope of protecting public welfare.

Justice\*

J. Neimanis

*\*The document has been signed by secure electronic signature and contains timestamp.*