



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## SEPARATE OPINION

of Justices of the Constitutional Court

Artūrs Kučs and Anita Rodiņa

in Riga on 23 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”.**

1. On 15 December 2022, the Constitutional Court delivered its judgement 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” (hereafter – the Judgement), by which it recognised 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*.

In providing reasoning for our opinion, we shall use the abbreviations used in the Judgement.

2. We consent to the conclusion made in Para 12.1. and Para 15.1. of the Judgement that the legislator enjoys discretion with respect to type and form of support to be granted to political parties. Likewise, we agree that the principle of legal equality is not violated if the differential treatment, created by the legislator, has been established within the limits of admissible discretion and there are reasonable and objective grounds for it.

**However, we do not uphold the Constitutional Court’s conclusion that a political party, which has submitted a list of candidates only for the election of one local government council (hereafter – a regional-level party), and such a political party, which has submitted a list of candidates for the election of the same council and for which, at the last *Saeima* election, more than two per cent of voters have voted (hereafter – a national-level party), are not comparable in terms of the legal equality principle. Likewise, we do not agree that the contested provision complies with the first sentence of Article 91 of the *Satversme*.**

3. It is found in Paragraph 15 of the Judgement: “[..] the feature that unites both parties is the votes acquired by political organisations (parties) at the local government elections. [...] the State financial support granted to political parties depends on, *inter alia*, how large part of society or how many voters the particular political force represents and how essential are issues of public importance that it offers to resolve. [...] Political parties whose aim is to gain representation in the *Saeima* fulfil functions that differ from the ones of regional political parties. [...] From the perspective of common national interests, the decisions that are adopted on the national level are comprehensive, in difference to the decisions adopted at local governments. Therefore also national-level political parties that have acquired more than two per cent of votes have greater possibilities than the regional political parties to represent the sovereign’s will in the name of common public good. The activities of regional political parties, in turn, is an important element of the local government and functions of these parties are linked to the economic and financial development of the local government. It can be concluded from the above that the political parties that operate on the national level and have been able to gain the support of more than two per cent of voters and those political parties that operate on the regional level have different functions in creating sustainable politics and reinforcing democracy. Activities of political parties to pursue the common interests of the entire Latvian society should be differentiated from activities to pursue the

interests of a particular local government. The functions of national-level and regional-level political parties are different and cannot be compared.”

We do not uphold the Constitutional Court’s conclusion that, due to the aforementioned reasons, regional- and national-level parties are not comparable in terms of the legal equality principle.

**3.1.** Such differentiation between political parties is not envisaged in legal provision that define the pre-conditions for establishing political parties and the existence thereof. Section 2 (1) of the Law on Political Parties provided the definition of a political party: “A party is an organisation that is established in order to perform political activities, to participate in election campaigns, to nominate candidates for deputy positions, to participate in the work of the *Saeima*, local government councils (parish councils) or the European Parliament, to implement the party programme with the intermediation of deputies, as well as to be involved in the establishment of public administrative bodies.” Neither do the subsequent provisions of the law indicate that the activities of regional- and national- level political parties should be regulated differently. For example, the annual report of regional- and national- level political party is examined by a sworn auditor if the turnover of a party’s has exceeded 10 minimum monthly salaries (*see Section 37 of the Law on Political Parties*).

Pursuant to Section 1 (2) of the Law on Financing Political Organisations (Parties), the purpose of this law is to ensure transparency, lawfulness, and conformity of the financial activities of the political organisations (parties) to the system of parliamentary democracy. It is explained in the annotation to the draft law that the main aims for introducing the State budget financing for political parties had been the following: 1) to decrease the financial dependence of these parties from donations by private persons, which increase the risk of becoming dependent on the requirements advanced by these persons; 2) to resolve the poor administrative capacity of Latvian political parties – their constant need of resources which prevented the Latvian political parties from covering their administrative costs and becoming more professional (*see Initial Impact Assessment (Annotation)*)

of the Draft Law “Amendments to the Law on Financing Political Organisations (Parties)” (No. 1697/Lp9)).

Thus, also the purpose of the Law on Financing Political Parties *per se* does not differentiate between regional- and national- level parties.

**3.2.** As noted in Section 2 (1) of the Law on Political Parties, political parties exist in order to perform political activities, in other words, any political party is a mechanism for exercising power. This is exactly the feature that differentiates political parties from public organisations (*see: Kuleša V. T., Vinčoreks P. Demokrātija. 20. gs. Nogale. Rīga: Zvaigzne ABC, 1996, 82. lpp.*). If the candidates proposed by a political party are elected to a decision-making body, corruption risk may occur.

The European Court of Human Rights has concluded that the aim of State budget financing to be allocated to political parties is to prevent corruption and excessive dependence of political parties on private donors. Thus, such financing reinforces political pluralism and facilitates proper functioning of institutions of a democratic state (*see Judgement by the European Court of Human Rights of 10 May 2012 in Case “Ozgurluk ve Dayanisma Partisi (ODP) v. Turkey”, Application No. 7819/03, Para 37*). The European Commission for Democracy through Law (the Venice Commission) also has noted that the State budget financing serves as a means for supporting political parties in their important role, as well as for preventing corruption and dependence on private donations. Such procedure of financing should aim to ensure that all parties, *inter alia*, small and new parties, could compete in elections on equal basis (*see Guidelines on Political Party Regulation of the European Commission for Democracy through Law (the Venice Commission) of 14 December 2020, CDL-AD(2010)024, Para 232, available: [venice.coe.int](http://venice.coe.int)*).

In view of the above and also of the fact that the decisions adopted by the local-level decision-making bodies impact most directly inhabitants of the respective city or municipality, it should be recognised that the need to diminish corruptions risks and ensure transparency of the model of financing political parties is equally important for both national- and regional-level parties.

**3.3.** In the situation envisaged in the contested provision – local government elections – both regional- and national- level political parties participate and acquire votes. We cannot uphold the conclusion made in the Judgement that such political parties are not comparable because their functions and aims of activities are said to differ (*see Para 15.2. of the Judgement*).

In this regard, it is important that the contested provision envisages allocation of financing depending upon the number of votes rather than mandates acquired at the election. I.e., also such national-level political party, which has not received the number of votes required to have its representatives elected to the *Saeima* or a local government council but has received more than two per cent of votes at the *Saeima* election, may receive this financing. A regional-level party, the representatives of which are elected to the local government council, create a link between society and the State power, ensuring society's organised participation in political processes (*compare, see Judgement by the Constitutional Court of 5 February 2015 in Case No. 2014-03-01, Para 20.1.*). Whereas a national-level party, which is not represented in any decision-making body, does not perform this important role in society.

Parliamentary democracy, in its broader meaning, comprises the entire political system – not only the national-level but also the local democracy (*see Dr. Ph. Daunis Auer's opinion in Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 5, pp. 38–39*). Local governments, placed between the State and its inhabitants, have an important role in reinforcing freedom and democracy in society (*see The European Commission for Democracy through Law (Venice Commission) Compilation of Venice Commission Opinions Concerning Constitutional and Legal Provisions for the Protection of Local Self-Government, CDL-PI(2016)002, p. 4, available: [venice.coe.int](http://venice.coe.int)*). The citizens' rights to participate in the governance of public affairs can be exercised in the most direct way on the local level. Local authorities are one of the main foundations of any democratic regime (*see Preamble to the European Charter of Local Self-Government*). Thus, also decentralised involvement of inhabitants into political processes is very important, it happens by people actively exercising their active

and passive electoral rights. Local inhabitants who have the most direct contacts with the local government can become aware of and deal with issues relevant to them, in particular, at local government institutions. By facilitating active involvement of different members of society in political processes, qualitative exchange of opinions and pluralism in the decision-making process can be achieved. Whereas in order to have elected to decision-making institutions representatives of such political parties, which make qualitative decisions that are compatible with public interests, as well as with the principle of sustainability, all political parties need appropriate capacity. State financing to political parties ensures, at least partially, this capacity.

Thus, irrespectively of whether a political party has participated in the *Saeima* election and acquired in it at least two per cent of votes, all political parties, which participate in local government elections and acquire votes therein, are in a comparable situation.

In view of all the above, it must be recognised that, in the context of the contested provision, regional- and national- level parties are united by the legal regulation on establishing political parties and their activities, the mechanism for creating political parties as a mechanism for exercising power and corruption risks related to it, participation in local government elections and acquiring votes therein, as well as the role of political parties in involving society in democratic process and adoption of decisions compatible with public interests are equally applicable to them.

**Thus, regional- and national-level parties are comparable in terms of the legal equality principle.**

4. Since the groups of persons, referred to above, are in similar and comparable circumstances, it must be clarified whether the contested provision envisages differential treatment of these groups.

Pursuant to the contested provision, the criterion for receiving the State budget financing for the votes acquired at the election of a local government council

is participation in the *Saeima* election and acquiring more than two per cent of votes therein.

The Applicant is a political party, which had submitted a list of candidates for the election of the Talsi Regional Council and the representatives of which had been elected to the Talsi Regional Council. The Applicant has never submitted a list of candidates for the *Saeima* election. At the election of the Talsi Regional Council in 2021, eight political parties in total submitted lists of candidates. Seven of them had submitted also lists of candidates for the *Saeima* election and more than two per cent of voters had voted for them at the last *Saeima* election. Therefore, these parties received the State budget financing whereas the Applicant did not receive it.

Thus, the contested provision envisages differential treatment of the aforementioned groups of persons by providing directly that only the national-level political parties are entitled to the State budget financing for the votes acquired at the last *Saeima* election.

**Hence, the contested provision envisages differential treatment of groups of persons that are in similar and comparable circumstances.**

5. It follows from the materials in the case that the contested provision had been adopted and promulgated in the procedure defined in the *Satversme* and the Rules of Procedure of the *Saeima*, is accessible in accordance with the requirements set out in regulatory enactments and has been defined with sufficient clarity, allowing a person to understand the content of rights and obligations following from it and forecast the consequences of the application thereof.

**Thus, the differential treatment, envisaged in the contested provision, has been established by a law, adopted in due procedure.**

6. To determine, whether there are objective and reasonable grounds for the differential treatment, defined by the contested provision, it should be verified whether it has a legitimate aim. If the differential treatment, established in the contested provision, lacks a legitimate aim, there is no need to review its compliance

with the principle of proportionality (*compare, see Judgement by the Constitutional Court of 16 May 2019 in Case No. 2018-21-01, Para 16*).

When differential treatment of comparable groups is established, in the legal proceedings before the Constitutional Court, the obligation to indicate and substantiate the legitimate aim of this differential treatment, first and foremost, rests upon the institution, which issued the act, in which this differential treatment was established (*compare, see, for example, Judgement by the Constitutional Court of 16 May 2019 in Case No. 2018-21-01, Para 16.1.*). The *Saeima* holds that the contested provision reinforces the system of parliamentary democracy, at the same time ensuring balanced use of the State resources in the interests of general public welfare (*see the Saeima's written reply in Case Materials, Vol. 1, p. 67*). It is also noted in the annotation to the draft law that the contested provision is aimed at providing financial support to the national-level political parties and strengthening a stable system of political parties (*see Initial Impact Assessment (Annotation) of the Draft Law "Amendments to the Law on Financing Political Organisations (Parties)" (No. 1697/Lp9)*). The Applicant, however, holds that the differential treatment lacks a legitimate aim.

**6.1.** As already noted in Para 3.3. of this Separate Opinion, democracy in broader understanding comprises not only the national-level but also the local democracy. Local governments have been called the cradle of democracy and, simultaneously, also the mirror of the particular state's democracy – the more developed local governments are in the state, the greater is democracy within it (*see: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Rīga: Latvijas Vēstnesis, 2021, 107. lpp.*). Democratic values may be promoted the best by local government institutions, which are closer to inhabitants. (*see Recommendation of 2 June 1994 of the Council of Europe Congress of Local and Regional Authorities 001(1994) on topical issues concerning local and regional authorities, available: coe.int*). Namely, citizens may exercise their right to participate in the governance of public affairs most directly on the local level because local governments are closest to inhabitants and, hence, they have better possibilities to influence decisions pertaining to daily life within a particular territory (*see Preamble to the European*

*Charter of Local Self-Government; see also: Stafecka L. Mēs demokrātijā. Rīga: Sabiedrība par atklātību – Delna, 2010, 30. lpp.).* Inhabitants of a local government, by participation in the election of the local government council, determine the way, in which the life of their city or municipality will be governed (see Dr. Ph. Daunis Auers' opinion in Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 5, p. 39).

The cooperation that develops between the local inhabitants and the local government is an important stage in increasing the level of civil society's development and regional-level political parties play an essential role in it. The aims set for the functioning of regional-level parties are related to the public interest in facilitating national development on the local level, increasing the welfare of the inhabitants of the respective local government and reinforce their civic activity. Also through their local-level activities, political parties participate in the processes that shape the political will of society and implement the purpose, defined in Section 1 of the Law on Political Parties to strengthen democratic and civil society. Hence, the local-level activities of political parties are equally important in reinforcing the democratic order of the State.

Contrary to the conclusion made in Para 15.2. of the Judgement, local democracy cannot be viewed in isolation from the national-level democracy. In a democratic state governed by the rule of law, the territory of the State cannot be fully governed without the participation of local governments. Decentralisation of the public administration functions is implemented on the basis of the principle of local government, transferring the fulfilment of some functions to democratically legitimised local governments (see *Decision by the Constitutional Court of 20 January 2009 on Terminating Legal Proceedings in Case No. 2008-08-0306, Para 16*). Namely, institutional existence of local governments belongs to the principles of the structure of the Republic of Latvia as a democratic state governed by the rule of law. Whereas, in terms of functions, a local government is territorial self-government, i.e., it performs its functions within a certain territory (see *Judgement by the Constitutional Court of 12 March 2021 in Case No. 2020-37-0106, Para 21.1.*). Thus, in Latvia, local governments also constitute

the State and the common national interests cannot be examined in isolation from the local governments' interests.

Thus, strengthening of democracy on the local level complies with the interests of not only the respective local government but also with the common interests of entire society. The Constitutional Court itself has recognised previously that the functioning of local government is directed at implementing also the common interests of society as a whole (*see Judgement by the Constitutional Court of 12 March 2021 in Case No. 2020-37-0106, Para 28*).

**6.2.** Election is the main instrument of political participation in a democratic society. Within local democracy, this is the election of the local government council. The only possibility to be a candidate at the election of a local government council, envisaged in the Latvian legal system, is establishing of a political party and submission of a list of candidates for the seats of local government councillors (*see Law on the Election of Local Government Councils, Section 15*). A private person or a union of electors may not participate in the election of a local government council. At the court hearing, several of the summoned persons noted that this system was atypical, compared to other countries (*see Mg. iur. Iveta Kažoka's and Dr. Ph. Daunis Auers' opinion in Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 4, p. 123, and Vol. 5, p. 26*). Moreover, *Mg. iur. Iveta Kažoka* noted that the establishing and maintaining a political party was an expensive process (*see Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 4, p. 123*).

Since the establishment of a political party has been set out as a mandatory requirement for participation in the election of a local government council, participation both in this election and participation in the *Saeima* elected are linked to equivalent expenditure and risks. Ensuring and maintaining the activities of a political party are linked to various daily expenditure, *inter alia*, such that are required for maintaining the office, employing staff, communicating with voters. Likewise, financing is needed also for the pre-election campaign and agitation, as well as other expenditure related to ensuring the public activities of political parties. All political parties that participate in democratic processes incur these expenses

(compare, see Dr. Ph. Daunis Auers' opinion in *Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 5, p. 40*).

Likewise, national- and regional-level parties face equal risks in relation to their financing, as already noted in Para 3.2. of this Separate Opinion. The European Commission Democracy through Law (Venice Commission) has concluded that the legal regulation on the financing of political parties is essential to guarantee the independence of political parties from undesirable influence by private financing and the State, it would also ensure to political parties equal possibilities to compete and would achieve transparent financing of political parties (see *The European Commission Democracy through Law (Venice Commission) Guidelines on Political Party Regulation of 14 December 2002, CDL-AD(2010)024, Para 204, available: [venice.coe.int](http://venice.coe.int)*). Open and transparent financing of political party is of decisive importance in combatting corruption, as well as earning and maintaining citizens' trust (see: *International Institute for Democracy and Electoral Assistance. Funding of Political Parties and Election Campaigns. A Handbook on Political Finance. Strömsborg: International Institute for Democracy and Electoral Assistance, 2014, p. 2*). Moreover, as noted by Dr. Ph. Daunis Auers, corruption risks may be even higher on the local level (see *Transcript of the court hearing of 16 November 2022 in Case Materials, Vol. 5, pp. 39–40*).

Prevention of these risks by granting State budget financing to political parties is in the interests of entire society. Transparent financing of political parties on the local level is as essential as on all other levels (see *Resolution 105 (2000) of the Council of Europe Congress of Local and Regional Authorities of 25 May 2000 on the financial transparency of political parties and their democratic functioning at regional level, available: [coe.int](http://coe.int)*). Namely, it is in the interests of society in general that political parties with appropriate capacity for adopting qualitative decisions, compatible with the interests of society and the State, as well as the principle of sustainability, are represented both in the *Saeima* and local governments. From the perspective of developing and reinforcing democracy, it is essential that decisions that do not depend on the interests of private donation were adopted at local government councils.

**6.3.** Although all political parties, which participate in local government elections, are in the same situation, the contested provision envisages different possibilities to them. Establishment of a political party is a mandatory pre-condition for participation in the election of a local government council; however, a party, which, first and foremost, directs its activities towards the inhabitants of one local government, thus, strengthens the civil society and democracy on the local level, does not receive the State budget financing and is limited in competing with those political parties that are the recipients of the State budget financing. This means that those persons who want to be candidates at the elections of local government councils not only have to meet the requirements regarding establishment and activities of political parties but also should implement them without the State budget financing.

We agree that the legislator may adopt such legal regulation that strengthens the national-level political parties and envisage, within the framework of the State budget, different amounts of financing for the national- and regional- level parties, *inter alia*, ensuring balanced use of the State budget resources in the interests of public welfare. However, pursuant to the contested provision, currently the State budget financing is allocated in a way that the regional-level parties are denied it altogether. This means that, with respect to these parties, the risks that private financing entails are not prevented, i.e., dependence on the provider of financing, corruption, unequal conditions of competition with those political parties that receive the State budget financing. Thus, the contested provision, perhaps, strengthens the national-level parties but is weakening the regional-level parties, which also are a part of parliamentary democracy. I.e., the contested provision creates obstacles to political pluralism, restricts the functioning of regional-level parties and decreases the involvement of local inhabitants in the implementation of local democracy. Therefore, we are of the opinion that the differential treatment, established in the contested provision, lacks a legitimate aim.

**Hence, the contested provision is incompatible with the first sentence of Article 91 of the *Satversme*.**

Justices of the Constitutional Court

Artūrs Kučs

Anita Rodiņa