



# 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 19 May 2022**  
**in Case No. 2021-32-0103**

**“On Compliance of Paragraph 10 of Section 13 (1) of the Law on the Procedures for Holding under Arrest and of Paragraph 10 of Annex 4 to the Cabinet of Ministers Regulation of 27 November 2007 No. 800 “Internal Procedure Regulations of Remand Prisons” with the First Sentence of Article 101 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia”.**

1. By its judgement of 5 May 2022 in Case No. 2021-32-0103, the Constitutional Court recognised that Paragraph 10 of Section 13 (1) of the Law on the Procedures for Holding under Arrest and of Paragraph 10 of Annex 4 to the Cabinet of Ministers Regulation of 27 November 2007 No. 800 “Internal Procedure Regulations of Remand Prison, from which prohibition for local government councillors, held under arrest, to use personal computer hardware with Internet access follows, complied with the first sentence of Article 101 and the first sentence of Article 106 of the *Satversme*. The court recognised that holding the office of a local government councillor fell within the scope of the fundamental right, established in Article 106 of the *Satversme*, – the right to employment. I do not consent to this conclusion made by the Court.
2. It follows from Article 101 of the *Satversme* that a local government councillor is the **representative of inhabitants** of the territory of the respective local government. A local government councillor represents the inhabitants of the respective local government’s territory as a totality and not individual interests of some inhabitants. A councillor is **elected** at the election of the local government council. An inhabitant of a local government whose interests are stably linked to the particular local government may be proposed as a candidate

for the office of a local government councillor (*see Section 8 of the Law on the Election of Local Government Council*).

3. The election of a local government council is held in accordance with the general electoral principles: it is general, direct, free, equal, proportional and held by secret ballot (*see the first sentence of Section 1 of the Law on the Election of Local Government Council and Decision by the Constitutional Court of 16 April 2008 on Terminating Legal Proceedings in Case No. 2007-21-01, Para 11*). In accordance with the principle of the immutable list, a voter has the right **to choose freely** between several lists of political organisations (parties) and, within the framework of one list, choose between several proposed candidates for offices of councillors. The elected councillors are determined in accordance with the proportionality principle. Election gives to the inhabitants of a local government the possibility to choose their representatives on the basis of their personal qualities, as well as their affiliation to a particular political party values and party programme of this political party, as well as various other subjective criteria and voters' own consciousness.
4. Holding the councillor's office is not a person's fundamental right, i.e., the right to employment, which could be obtained in some way, for example, as of the moment of election, is non-existent. A person does not have a fundamental right that would be derived from the right of employment, i.e., the right to become a councillor (*compare, see, for example: Scholz R. GG Art. 48. In: Maunz T., Dürig G. (Hrsg.) Grundgesetz-Kommentar. Werkstand: 94. EL Januar 2021, Rn. 39*).
5. Thus, in order to hold the councillor's office, a person is not required to have particular abilities and professional qualifications. Holding the councillor's office is implementation of the people's sovereignty within a certain period of time. The councillor's office is not chosen by the candidate himself but the voters of the local government, through elections, according to their personal criteria and their political sympathies, select a candidate for the councillor's office and entrust the councillor's mandate to the elected person.
6. It follows from the obligation to represent the interests of the local government's inhabitants that, as the result of elections, the councillor receives from the local governments inhabitants **the mandate of representation**. Hence, holding the office of a councillor and exercising the rights is **exercising public power** for the benefit of society. A councillor is neither in employment, nor civil service

relations with the local government and is not particularly subject to the local government. A councillor is free in exercising his mandate of representation because is not personally liable for decisions, in the making of which he has participated by voting, is not subject to instructions given by his own party, other organisations or voters, but acts only in accordance with his own consciousness. The free mandate of representation is constituted by certain **public law competences**, which serve to ensure that the councillor is able to implement representation of the interests of the local government's inhabitants. These competences are the councillor's rights to:

- 1) participate in the sittings of the council and its standing committees and in making decisions;
  - 2) vote and propose draft decisions;
  - 3) speak at sittings;
  - 4) obtain information (the right to request information, ask questions);
  - 5) self-organise together with other councillors (for example, in factions).
7. Contrary to human freedom, guaranteed by fundamental rights, a councillor's freedom is not freedom from obligations but the freedom to exercise the public law competences which follow from the mandate of representation without being hindered by others (*compare, see: Scholz R. GG Art. 48. In: Maunz T., Dürig G. (Hrsg.) Grundgesetz-Kommentar. Werkstand: 94. EL Januar 2021, Rn. 32–34*).
8. Thus, restriction on holding the office of a local government councillor are neither restrictions on employment or civil service relations or restrictions on employment in the meaning of Article 106 of the *Satversme* but are restrictions **only on the mandate right**– restriction on the principle of local government in the meaning of Article 101 of the *Satversme*. Likewise, it should be taken into consideration that a councillor is in neither employment, nor civil service relations with the local government.
9. Thus, in the present case, compliance of the contested provisions only with Article 101 of the *Satversme* should have been reviewed, examining it not as a guarantee of a person's fundamental rights but as a guarantee that a local government councillor is able to exercise the rights, entrusted to him, to participate in the implementation of public power. At the same time, it should be taken into account that the established restriction, in any case, applies to all persons, irrespective of whether they have previously been employed in accordance with the scope of Article 106 of the *Satversme*, had been active in implementing the public power in accordance with Article 101 of the *Satversme*

or had not been working at all, and the contested provisions do not provide for the prohibition of particular employment but it inevitably follows from the criminal procedural system and the purpose of arrest. I.e., the contested norms are not aimed at restricting the constitutionally legal existence of a councillor but at establishing the procedure of arrest *per se*.

Justice \*

J. Neimanis

*\*The document is signed with the secure electronic signature.*