



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on behalf of the Republic of Latvia

in Riga, on 30 March 2022

in Case No. 2021-23-01

The Constitutional Court of the Republic of Latvia in the following composition: the Chairperson of the Court Session Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs and Anita Rodiņa,

on the basis of an application by Mr Aivars Lembergs,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Section 16, Paragraph 1, Section 17, Part one, Paragraph 11, as well as Section 19.² and

Section 28.¹ of the Constitutional Court Law,

examined the case in writing at a court hearing on 1 March 2022

“On Compliance of Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils with Article 101 of the *Satversme* of the Republic of Latvia”.

The Establishing Part

1. Section 32, Paragraph four of the Law on the Election of Local Government Councils states as follows: “Voting at the location of a voter shall take place only if

the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.”. Paragraph eight of this Law states as follows: “For the suspects, accused or defendants who are subject to arrest as the security measure, voting shall be organised at the location of such persons in accordance with the procedures laid down in Paragraphs one and four of this Section” (hereinafter collectively referred to as – the contested norms).

2. The Applicant – Mr Aivars Lembergs (hereinafter referred to as – the Applicant) – holds that the contested norms restrict the right guaranteed to him in Article 101, Paragraphs one and the first sentence of Article 101, Paragraph two of the *Satversme*, insofar as these norms deny persons who are subject to arrest as the security measure and who are in places of deprivation of liberty located beyond the territory of the electoral district in the electoral roll of which they are registered, from voting in the election of local government councils. The Applicant is subject to arrest as the security measure and he is in a place of incarceration located in the territory of the electoral district in the electoral roll of which he is not registered. In order to be able to exercise his rights to vote in the election of local government councils, the Applicant applied to the Central Electoral Commission and to the person directing the proceedings – the Judicial Panel of Criminal Cases of Riga Regional Court – but his request was refused.

The contested norms are formally laid down by law, but in the present case they are not law in the material sense, since they are contrary to the principles of good legislation. Namely, the legislator has failed to check their compatibility with the *Satversme*, taking into account the findings of the Constitutional Court and the European Court of Human Rights. The fact that the *Saeima* Electoral Law was revised shows that the members of the *Saeima* understood the need to ensure a mechanism in a democratic state for voters who are subject to arrest as the security measure, or who are serving a sentence related to deprivation of liberty shall be able to exercise their right to vote in elections without unjustified restrictions. However, the legislator has failed to act by providing for a similar regulation in the Law on the Election of Local Government Councils, and thus has committed a violation of Article 101 of the *Satversme* contrary to the findings of the Constitutional Court and the European Court of Human Rights.

The Applicant holds that the restriction established by the contested norms does not have the legitimate aim referred to in Article 116 of the *Satversme*, therefore the contested norms are contrary to Article 101, Paragraph one and the first sentence of Paragraph two of the *Satversme*. According to the Applicant, the purpose of Section 32, Paragraph four of the Law on the Election of Local Government Councils is probably to facilitate the work of the election commissions of the local government councils by relieving them from the obligation to organise voting for those voters who are located outside the territory of the respective electoral district. However, the aim to facilitate the work of the executive power does not, in itself, correspond to any of the legitimate aims mentioned in Article 116 of the *Satversme*. On the other hand, Section 32, Paragraph eight of the Law on the Election of Local Government Councils in so far as it extends to arrested persons the procedure which was previously provided only for persons who are unable to come to the polling premises due to their state of health, and in particular – in so far as it extends to arrested persons the restriction that the person must be located in the territory of his/her the electoral district is rather to be regarded as an error on the part of the legislator. No objective justification could be found for such a restriction. Moreover, the Applicant has also expressed an opinion on compliance with the principle of proportionality, namely, that there are other, alternative solutions which would be less restrictive of the fundamental rights guaranteed to a citizen of the Republic of Latvia in Article 101, Paragraphs one and the first sentence of Paragraph two of the *Satversme*, but would be as effective as voting in prison or postal voting.

The restriction of the fundamental right is not proportionate, i.e., the benefit to society does not outweigh the harm caused to the rights and legitimate interests of the individual. The contested norms fail to establish a public benefit or interest, since facilitating the work of the local government election commissions cannot be regarded as a public interest. On the contrary – society has an interest in ensuring that as many citizens as possible participate in elections and that citizens' participation in the democratic process is not hindered. This would give greater legitimacy to the elected local government councils and allow to elect the composition of the local government council that more accurately reflects the views of the local voters as a whole. It is in the public interest not only that the Law on the Election of Local Government Councils formally includes the right to vote in the

election of local government councils for the suspects, accused or defendants who are subject to arrest as the security measure, but also that the persons concerned can actually exercise these fundamental rights.

The imposition of restrictions to vote in the election of local government council for the arrested persons and are presumed innocent, where the restrictions in question are not necessary for carrying out criminal procedural activities or for the maintenance of order and security in a place of incarceration, but in fact prevent the arrested persons from voting in the election of local government councils, is not permissible and is not proportionate.

In his opinion on the case-file the Applicant points out that no invited person has claimed that the contested norms comply with Article 101 of the *Satversme*. The Applicant disagrees with the opinion of the *Saeima*, namely that the infringement of his fundamental rights has arisen not as a result of the contested norms, but as a result of their incorrect application. The legal framework contained in the contested norms is unambiguous, and it is not possible to interpret those norms in such a way that they imply the right of an arrested person to vote in local government elections if he is not located in the territory of the electoral district in the electoral roll of which he is registered. Such a result of interpretation of the contested norms cannot be achieved by any method of interpretation of legal norms, since the legislator has exhaustively determined for which arrested persons voting is organised at their place of location. The Applicant emphasises that the present case does not concern only a narrow circle of persons, but affects the process of democratic legitimization of the local authority, namely the general importance of elections. Moreover, the information provided by the Prison Administration shows that the number of arrested persons is significant.

3. The institution that passed the Contested Act – the *Saeima* – states in its reply that the contested norms do not result in the restriction on rights set forth in Article 101 of the *Satversme*, and also requests the termination of the proceedings in the case under consideration.

The *Saeima* is of the opinion that the proceedings in the present case should be terminated on the basis of Article 29, Paragraph one, Clause 6 of the Constitutional Court Law, because the application does not comply with the requirements specified in Section 19.², Paragraph two of the Constitutional Court Law. The circumstances

referred to in Section 19.³, Paragraph three of this Law, on the grounds of which the Constitutional Court would be entitled to examine the initiated case, do not exist either, since the examination of the specific application is not of general importance. The Applicant has been given an opportunity, in compliance with the principle of subsidiarity, to apply to the administrative court before lodging the constitutional complaint. The institution's inaction by not providing the Applicant with the opportunity to vote in the electoral district in the electoral roll of which he is registered is to be assessed as *de facto* action. It is subject to examine before an administrative court that is an effective general remedy for protection. In addition, a person may also request that the authority should act in fact in his or her favour, including that the authority should grant him or her the right to vote in the electoral district in the electoral roll of which he or she is registered. It is also possible to obtain appropriate compensation in administrative proceedings for an unlawful act of the institution.

The infringement of the fundamental rights of the Applicant results not from the contested norms, but directly from incorrect application of the legal norms, since the legislator in Article 6 of the Law on the Election of Local Government Councils has exhaustively specified those persons who have no right to elect the council in the Republic of Latvia, and these persons do not include the accused persons who are subject to arrest as the security measure. Moreover, the Administrative Regional Court has also confirmed this view, holding that persons such as the Applicant should be guaranteed the right to vote in the electoral district in the electoral roll of which he or she is registered. According to Section 2 of the Electoral Register Law the electoral register, *inter alia*, shall ensure keeping records of the persons who in accordance with the Law on the Election of Local Government Councils have the right to vote in the Republic of Latvia. If a person on whom arrest has been imposed as a security measure is included in the electoral register, then such a person should have the right to vote in the election of local government council in the electoral district in the electoral roll of which he or she is registered.

4. The invited person – the Ministry of Justice – states that the legislator has provided the right to vote for arrested persons and has stipulated in Section 32, Paragraph eight of the Law on the Election of Local Government Councils that for

the suspects, accused or defendants who are subject to arrest as the security measure, voting shall be organised at the location of such persons. With regard to these persons Section 32, Paragraphs four and eight of the Law on the Election of Local Government Councils shall be applied, which stipulates that: if certain voters are unable to come to the polling premises due to their state of health, the polling station commission shall, on the basis of a written submission from such voters or their authorised person which shall be registered in a special log, organise voting at the location of such voters, ensuring a secret ballot. However, voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. On the other hand, if the voter is located in the territory of another electoral district, he is not actually provided with the right to vote.

In accordance with the current regulatory enactments, arrested persons have been placed in a remand prisons where they must remain until the execution of the security measure imposed in the criminal proceedings – arrest – is ensured. During the criminal proceedings, decisions regarding the arrested persons are taken by the person directing the proceedings, i.e. upon request of the person directing the proceedings, an arrested person may be placed in a place of temporary detention for the time period necessary for the performance of procedural activities and court proceedings. It follows from the current legal framework that the arrested person may be transferred to another place only in the cases provided for by law, and the decision on the necessity to transfer the arrested person outside the prison system is taken by the person directing the proceedings.

The Ministry of Justice recognises that the lack of technical solutions for persons who are subject to arrest as the security measure restricts their right to participate in the election of local government councils if they are held in a secure detention institution and the place of detention differs from the electoral district where the relevant person is registered as a voter. However, this problem is not merely technical, as the restriction of civil rights of the arrested persons constitutes a violation of the rights of the arrested persons. The right to vote is recognised as the key political right, and the State has a duty to ensure that the right to participate in election of local government councils is practicable without unjustified restrictions.

5. The invited person – the Ministry of the Interior – states that within the scope of its competence it is not in a position to give an opinion on the issues relevant to the present case.

The Ministry of the Interior explains that it participated in the preparation of the draft law “Amendments to the Law on Election of the Republic City Council or Municipality Council”, the relevant law was adopted by the *Saeima* on 11 June 2020 and, *inter alia*, Article 32 of the Law on the Election of Local Government Councils is amended. However, the proposals made by the Ministry of the Interior did not concern the legal regulation contained in the contested norms, but were related to other norms of the Law on the Election of Local Government Councils.

6. The invited person – the Ombudsman – considers that the contested norms, insofar as they deny suspects, accused or defendants who being imposed custody as a restraint measure from voting in the election of local government councils, if these persons are in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which they are registered, restrict the rights guaranteed to persons in Article 101 of the *Satversme*.

The Ombudsman considers that although the *Saeima* refers to the case law of the Administrative Court that recognises the right of arrested persons to participate in the election of local government councils even if they are held in the place of detention outside the territory of the respective electoral district, these rulings refer to the recognition of a violation, not to a mechanism for ensuring rights. Even if the courts recognise the right of arrested persons to participate in the election of local government councils even if they are outside the territory of the respective electoral district, the organisation of voting in prisons and polling stations remains unclear and unregulated. The Ombudsman considers that there are grounds to examine the application on its merits, as the constitutional complaint in question is of general relevance, in particular in view of the ineffectiveness of the remedy and the need to assess the shortcomings of the regulatory framework.

Article 101 of the *Satversme* guarantees citizens several forms in which they can exercise their participation in the activities of the State and local governments.

Participation in the activities of the state and local governments is understood basically as the right to participate in the formation of the legislature – the *Saeima* – and local governments by voting and standing as a candidate in elections.

Forms of participation may be direct or indirect, and they must not be formal – the participation must be effective, because only effective participation is consistent with the principle of popular sovereignty. Mechanisms for the protection of these rights also need to be effective. Consequently, the obligation of the state not only to guarantee the citizen the formal rights, but also to create preconditions (opportunities) for the citizen to participate in the activities of the state and local governments, doing so consciously and with an understanding of the substance.

The restriction that prevents arrested persons from participating in election of local government council, while staying in prison, if these persons are not located in the territory of the electoral district in the electoral roll of which he or she is registered, is laid down by Section 32, Paragraph four of the Law on the Election of Local Government Councils. The restriction is stipulated by law adopted in accordance with the procedures specified by law. The contested norms allow arrested and defendants to participate in the election of local government council, however, the Paragraph four of the said Article imposes a restriction on the right to vote by stipulating that voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. In assessing the legitimate aim of the restriction, the Ombudsman points out that the actual difficulties of the public authorities in ensuring the participation in the election of local government council of persons who have been in prison for a long time should not be identified with the legitimate aim. Such a legitimate aim is questionable, as it disproportionately restricts the fundamental rights of persons, namely the right to participate in the election of local government council. The special legislative provision should not restrict the rights guaranteed to individuals in Article 101 of the *Satversme*.

The Ombudsman doubts that alternative means of ensuring the right to vote for arrested persons in prisons have been considered. In this respect, organisational problems are apparent, namely the difficulty of both getting the voters concerned to the appropriate polling stations and of getting representatives of the various polling

stations to arrive to take votes in prisons. However, no assessment has been made as to whether there are alternative ways to ensure the participation of persons in prison in the election of local government councils.

Currently, the state is able to organise and ensure participation in the election of local government councils for Latvian citizens living abroad. Thus, it would be possible to assess whether it would also be possible to organise participation in the election of local government councils by postal voting for persons in prisons or to find other alternatives that would less restrict the rights guaranteed to individuals. Arrested persons should be guaranteed the right to participate in the election of local government councils, as the local government to which the suspects, accused or defendants belongs will be the primary provider of support to that person upon release from prison.

On 13 February 2014 the Ombudsman sent an opinion to the Ministry of Justice, the Central Election Commission and the Saeima's State Administration and Local Government Commission, stating that serious deficiencies in the regulatory framework regarding the possibilities for arrested persons to effectively exercise their statutory right to participate in the election of local government councils had been identified. The Ombudsman has requested the Ministry of Justice, in cooperation with the responsible authorities, to remedy the deficiencies in the relevant normative acts by 1 October 2014 and to inform it thereof.

7. The invited person – the Central Election Commission – is of the opinion that in accordance with the current legal framework, election commissions and the polling station commissions must comply with the provision of Section 32, Paragraph four of the Law on the Election of Local Government Councils, namely voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. In order to ensure voting in other cases, amendments to this law are needed, which would determine the procedure by which the right to vote can be exercised.

The principle of legitimate expectations and equality require the State timely and accurate regulation of the law in all matters affecting the election procedure, so that the rights contained in the Law on the Election can be used equally by all participants in the election process. A free, arbitrary interpretation of legal norms is

not allowed in the election procedure that would lead to different actions of election commissions in essentially the same cases and thus give rise to doubts as to the legitimacy of the election results.

The Central Election Commission in 2016 taking into account the Ombudsman's opinion in the case under examination on the rights of the arrested persons to participate in the election of local government councils and the findings of the Administrative Regional Court, assessed the issue of voters unable to vote on election day or on previous voting days, if for a longer period of time before the election day they are not located in the administrative territory where their place of residence is declared, for example, persons staying in social care centres, suspects and accused persons in custody, as well as persons staying in hospitals during the election. The introduction of postal voting in Latvia is proposed as a solution. As the Central Election Commission does not have the right of legislative initiative, the draft law was submitted to the *Saeima's* State Administration and Local Government Commission with a request to submit it to the *Saeima* for consideration, but the draft law was rejected at the *Saeima* session. The Central Election Commission has not proposed again such proposals to the Parliament. After the election of local government councils in 2021 the Commission has provided the Ministry of Justice with its views on how to ensure that arrested persons who are not located in the territory of his/her the electoral district, will have opportunity to vote in the future.

8. The invited person – the Prison Administration – believes that the arrested person who wants to participate in the election of local government councils, but is in the prison in another administrative territory, should have the opportunity to participate in the elections. In particular, Article 25 of the International Covenant on Civil and Political Rights, *inter alia*, provides that every citizen shall have the right and the opportunity to vote, without any of the distinctions and without unreasonable restrictions.

Section 4, Paragraph three of the Law on the Procedures for Holding under Arrest provides for an exceptional case when an arrested person may be transferred from a prison to another place. Namely, upon request of the person directing the proceedings, an arrested person may be placed in a place of temporary detention for the time period necessary for the performance of procedural activities and court

proceedings. Section 11.¹, Paragraph one of the Law on the Procedures for Holding under Arrest provides that the head of the Prison Administration may transfer an arrested person to another remand prison, taking into account medical, security, and crime prevention criteria. Pursuant to Paragraph two of the said Article, the administration of such remand prison to which the arrested person has been transferred shall inform the person directing the proceedings of the transfer of the arrested person to the specific remand prison. It follows from this legal regulation that the arrested person cannot be transferred to any place for any reason, for example to another administrative territory, to ensure his participation in the election of local government councils, but can only be transferred in cases provided for by law. The decision on whether an arrested person needs to be transferred outside the prison is taken by the person directing the proceedings.

9. The invited person – Professor of the Faculty of European Studies at Rīga Stradiņš University *Dr. iur. Ilga Kreituse* - considers that the mechanism for exercising the right to vote should treat equally all citizens who have the right to vote.

If you are a voter living abroad, you can vote by postal voting. A similar possibility of exercising the right to vote could be applied to other groups of citizens who, due to certain circumstances, are not present in their electoral district at the time of the elections. Postal voting is in line with the development of the exercise of political rights in the light of modern technological possibilities. It is unacceptable that issues relating to restrictions on the right to vote should be dealt with on a case-by-case basis.

10. The invited person – *Mg. soc. pol. Arnis Cimdars* - points out that the previous amendments to the Law on the Election of Local Government Councils regarding the possibility for arrested persons to participate in the election of local government councils have not been the main amendments to the electoral procedure. Most often, the provisions of this law have been amended due to similar changes in the Law on the Election of the *Saeima* or the Election to the European Parliament

Law. Latvia, unlike other European countries, has no Electoral Code. Therefore, the different electoral laws are not amended at the same time.

The most significant change introduced in the Law on the Election of Local Government Councils that could in the short term also affect the possibility of the arrested persons to vote in the election of local government councils, is to be made in 2020 by introducing a new voting procedure in the election of local government councils – postal voting – in cases where the voter resides in a foreign country.

11. The invited person – Lecturer of the Faculty of Law at Rīga Stradiņš University *Dr. iur. Kitija Bite* – holds that the contested norms do not comply with Article 101 of the *Satversme*. Although the legislator may restrict the right of a person to participate in the election of local government councils by a legal provision, such restrictions may not be discriminatory against a person in prison in the territory of a municipality other than his/her own.

The UN Human Rights Committee has established that the right of citizens to participate in the conduct of public affairs, the exercise of the right to vote and the right to equal access to public service cannot be restricted except on the basis of law and for objective reasons. International human rights law establishes both the right of a person to participate in public administration through the right to vote and the right to stand for election, and the obligation of the State to ensure that this right is free from discrimination and unjustified distinctions. Thus, it is not sufficient to have legal provisions restricting or prohibiting participation in elections, but it is also necessary to assess what objective reasons could justify a restriction or prohibition of the right to vote, since elections are one of the ways in which participation in public administration is expressed.

With the restriction of the right to vote, that is, the ban on participating in the election of local government councils the general clause of Article 101, Paragraph two of the *Satversme* a fully fledged citizen of Latvia has been specified for persons who are serving a sentence in places of deprivation of liberty. Latvian citizens who meet the criteria set out in the Law on the Election of Local Government Councils and who are not serving a sentence in places of deprivation of liberty may vote in the election of local government councils in a particular administrative territory.

However, the legislator has not made the person's imprisonment a criterion for the prohibition of voting, since a suspect or defendants who is subject to arrest as the security measure may participate in the election of local government councils.

According to the contested norms voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. Section 32, Paragraph eight of the Law on the Election of Local Government Councils clearly reflects the legislator's decision to distinguish between the custodial sentence and an arrest as the security measure until, with regard to the person, according to the presumption of innocence the judgement of conviction has not entered into force and such person has been recognised as a suspect or accused person. For a person who has been granted the status of a suspect or an accused person and who are subject to arrest as the security measure, retaining a link with his/her local government, should be retained the right to participate in the decision-making on matters binding on the local government, including participation in the election of local government council. However, a person who has the status of a convicted person and who is serving a sentence of deprivation of liberty in prison, for a shorter or longer period of time, loses the connection with the local government, and therefore the legislator has restricted the right of such person to participate in the election of local government council. Thus, the legislator has limited the right guaranteed by the *Satversme* to a person to participate in the election of local government council to a minimum extent, depriving of this right only those persons who are serving a sentence of deprivation of liberty on the basis of the judgement of conviction, and such restriction is to be recognised as being compatible with the *Satversme*.

Another aspect included in the contested norm is also significant - the geographical location of the prison and its location in the administrative territory of the relevant local government. Section 32, Paragraph four of the Law on the Election of Local Government Councils stipulates that voting rights may be exercised at the location of a voter only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. This provision excludes from the electorate those persons who, according to Paragraph eight of the same Article, could be vote as suspects or accused persons who are subject to arrest as the security measure.

This decision of the legislator has become the reason for the fact that the possibilities for the implementation of human rights are different for two identical groups of persons. The first group includes persons who are in prison in the territory of the local government in the electoral roll of which he or she is registered – these persons can exercise their voting rights. In its turn, the second group includes persons who are in prison not in the territory of the local government in the electoral roll of which he or she is registered, but in the territory of another local government – these persons cannot exercise their voting rights. Although all these persons have the same legal status – a suspect or an accused – and are subject to arrest as the security measure, they cannot exercise equally their voting rights. Moreover, a person cannot choose the place of imprisonment.

The legislator's decision to restrict such a fundamental right, without stating objective reasons, is not justified. A person's right to participate in the work of the local government is restricted if he or she is subject to arrest as the security measure and his or her place of imprisonment is located in the administrative territory of another local government. Section 32, Paragraph eight of the Law on the Election of Local Government Councils establishes restrictions on the right to vote which depend on the geographical location of the place of imprisonment, and therefore incompatible with the voting rights enshrined in Article 101 of the *Satversme*.

12. The invited person – *Mg. iur.* Ērika Gribonika – indicates that the contested norms do not comply with the *Satversme*.

The security measure – arrest – is aimed at achieving the objective of criminal proceedings as defined in Article 1 of the Criminal Procedure Law and is to be applied without unjustified intervention in the life of a person. A person's detention in custody is not a ground for, *inter alia*, restricting his active voting rights, unless that is necessary to achieve a just settlement of the criminal-law relationship and to protect the public against the person to be isolated.

Article 5 and 6 of the Law on the Election of Local Government Councils specifying the rights included in the first sentence of Paragraph two of Article 101 of the *Satversme*, by establishing that among the persons who have the right to elect the local government council there are also persons who are subject to arrest as the

security measure. On the other hand, the contested norms, providing for the procedure by which persons who are subject to arrest as the security measure, can exercise their active voting rights, also contain an additional feature, namely the requirement for the person to be located in the territory of the electoral district in the electoral roll of which he or she is registered. Consequently, the range of persons covered by the contested norms has been narrowed and, accordingly, the subject of regulation of the legal norm included in Section 5 of the Law on the Election of Local Government Councils has also been narrowed.

The legislator has exhaustively determined for whom arrested persons voting shall be organised and has emphasised in the contested norms that only persons who are subject to arrest as the security measure and who are located in the territory of the electoral district in the electoral roll of which he or she is registered may participate in voting. This is evidenced by the adoption process of the contested norms. Namely, prior to the adoption of the Law on Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council of 11 November 2004, it was already a requirement that a person in order to exercise the voting rights has to be located in the territory of his/her local government. By establishing the same procedure for persons who are subject to arrest as the security measure, the legislator has deliberately clarified that, by extending the circle of subjects who have the right to participate in the election of local government councils, it is not intended to extend these rights to all persons who are subject to arrest as the security measure. Thus, it can be concluded that the legislator deliberately did not intend to grant the right to participate in the election of local government to persons who are subject to arrest as the security measure and who are not located in the territory of the electoral district in the electoral roll of which he or she is registered.

Pursuant to Article 104, Paragraph two of the Administrative Procedure Law, if a court believes that a legal provision does not conform to the Constitution or provision (act) of international law, it shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court, in the given case the Applicant has no possibility to defend his rights by means of general legal remedies.

Although the two groups of persons – persons serving a prison sentence and persons who are subject to arrest as the security measure – are in fact in places of deprivation of liberty, they are distinguishable because they are in different circumstances. The distinction between an arrest and deprivation of liberty is evidenced by their purposes: A person's holding under arrest and serving a sentence of deprivation of liberty are two distinct legal situations. The rules applicable to those groups of persons are also different. Consequently, the cases in which the fundamental rights of such persons may be restricted and the extent to which they may be restricted may also differ.

The restriction provided for in the contested norms for persons who are subject to arrest as the security measure does not depend on the personality of the arrested person, the criminal offence committed or any other assessment of the circumstances related to the person concerned. The restriction depends solely on the person's presence or absence in the territory of the electoral district in the electoral roll of which he or she is registered, and therefore cannot be regarded as objectively justified and reasonable. It is also not clear what values guaranteed by the *Satversme* the legislator intended to protect by the restriction in question. Lack of financial or human resources is not a sufficient reason to restrict, *inter alia*, the right of persons who are subject to arrest as the security measure to elect local government council.

For any person who are subject to arrest as the security measure, the state of vulnerability resulting from this special relationship of subordination to the State makes it necessary to strictly respect the fundamental rights of such a person and to provide him with an effective opportunity to exercise those rights. The contested norms restrict the fundamental rights of persons whose freedom of movement is restricted and whose location is determined independently of their will, and such a restriction cannot be justified.

The Concluding Part

13. On the basis of Section 29, Paragraph one, Clause 6 of the Constitutional Court Law the *Saeima* requests to terminate legal proceedings in the case on compliance of the contested norms with the *Satversme*.

The *Saeima* is of the opinion that the proceedings in the present case should be terminated, because the application does not comply with the requirements specified in Section 19.², Paragraph two of the Constitutional Court Law, namely, the Applicant has not used the general remedies for protection. The *saeima* points out that the circumstances referred to in Section 19.², Paragraph three of this Law, on the grounds of which the Constitutional Court would be entitled to examine the initiated case, do not exist either, since the examination of the specific application is not of general importance. Moreover, the *Saeima* holds that the infringement of the Applicant's fundamental rights results not from the contested norms, but from their incorrect application(*see Case file, Volume 4 Page 33 and Volume 7 Pages 149–150 and 154*).

The Applicant, on the other hand, states that the contested norms are mandatory and are formulated in an unambiguous manner, and do not allow for exceptions. The applicant is in a situation typical for the scope of these norms and he has no legal remedies which would allow him to ensure that the election commission of the respective local government provides him with the possibility to vote in the election of local government council of 5 June 2021. Since the infringement of the Applicant's fundamental rights arises directly from the contested norms, there are no real and effective general legal remedies to prevent the infringement of his fundamental rights, moreover, the Constitutional Court Law does not require exhaustion of formally existing possibilities(*see the application in the materials of the case, vol. 1 pages 4–5*).

The provisions of Article 29, Paragraph one of the Constitutional Court Law gives the Constitutional Court rights to terminate the case, but does not provide for the obligation to terminate it. If arguments on termination of legal proceedings have been presented in the case, the court shall assess them before assessing the constitutionality of the contested norm(*see, for example, Para 13 of the Decision of the Constitutional Court of 15 October 2021 on termination of legal proceedings in Case No 2020-63-01*).

Consequently, the Constitutional Court will first of all examine whether there are grounds to terminate the proceedings in the case under review.

14. In order to decide on the issue of termination of legal proceedings at the request of the *Saeima*, in the case under review the Constitutional Court must establish: 1) whether the infringement of the Applicant's fundamental rights results directly from the contested norms and 2) whether the Applicant had such possibilities to defend his fundamental rights, which may be regarded as general remedies within the meaning of Section 19.², Paragraph two of the Constitutional Court Law.

14.1. According to the *Saeima*, the infringement of the fundamental rights of the Applicant does not result from the contested norms, but from the incorrect application of those norms. The legislator has exhaustively specified those persons who are not entitled to elect the council in Latvia in Section 6 of the Law on the Election of Local Government Councils. The said Article does not prohibit a person who are subject to arrest as the security measure from participating in the election of local government council, and the legislator did not intend to deprive such persons of the right to vote. The fact that a person is subject to arrest is not a ground for his exclusion from the electoral register. The law enforcer is obliged to remedy this deficiency in the law, and Latvian case law confirms that administrative courts are entitled to use the legal method – further development of the law – to fill the gap in the law.

The Constitutional Court has already indicated that it is essential to distinguish the issue of constitutionality of the contested legal regulation from the issue of whether the contested legal regulation has been correctly applied to a person(*cf. paragraph 11.2 of the judgement of the Constitutional Court of 29 December 2021 in Case No 2021-09-01*). Moreover, incorrect application of a legal norm does not constitute a ground for reviewing the constitutionality of a legal norm before the Constitutional Court(*see paragraph 11 of the Decision of the Constitutional Court of 17 November 2017 on discontinuance of proceedings in Case No 2017-01-01*).

Law on the Election of Local Government Councils also provides for the right to vote for persons who are subject to arrest as the security measure. Section 32, Paragraphs one and four of the Law on the Election of Local Government Councils shall apply to the voting procedure of the persons concerned. Pursuant to Paragraph one of the said Section, if certain voters are unable to come to the polling premises due to their state of health, the polling station commission shall, on the basis of a

written submission from such voters or their authorised person which shall be registered in a special log, organise voting at the location of such voters, ensuring a secret ballot. In its turn, Section 32, Paragraph four of the Law on the Election of Local Government Councils states as follows: “Voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.”. Consequently, for those arrested persons who are in prison in the territory of another electoral district, voting is not possible in accordance with Section 32, Paragraph four of the Law on the Election of Local Government Councils.

Consequently, the contested norms, and not their application, impose a restriction on the participation in the election of local government council of arrested persons who are located outside the territory of the electoral district in the electoral roll of which he or she is registered.

Thus, the infringement of the fundamental rights of the Applicant arises directly from the contested norms.

14.2. The Constitutional Court has indicated that compliance with the principle of subsidiarity requires exhausting the real and effective possibilities to defend the fundamental rights infringed, rather than resorting to any theoretically possible remedies that could in any way relate to the situation of the applicant (*see paragraph 14 of the Constitutional Court's judgement of 19 October 2011 in Case No 2010-71-01*).

This means, *inter alia*, that there is a realistic prospect that the remedy in question will achieve a substantive result that will remedy the alleged infringement of the fundamental right. If a mandatory norm is formulated unambiguously, the Applicant is in a situation typical for the scope of that norm and there are no doubts as to the application of the norm in a given case, then the Constitutional Court is not required by law to exhaust such formally existing possibilities to appeal against the factual conduct of an institution, the use of which is clearly not expected to result in a decision favourable to the person.

14.2.1. The *Saeima*, in its reply and additional explanations, states that the inaction of the institution in not providing the Applicant with the right to vote in the electoral district in the electoral roll of which he is registered, is to be assessed as *de facto* action. The applicant had the possibility to lodge an application before the

administrative court against the institution's *de facto* action(see the Case-file, volume 4 Page 33–34and volume 7 Page 149).

According to Article 31 of the Law on Administrative Procedure, a private person may apply to a court for it to control the legality of the actual action of an institution. As stipulated in Section 91, Paragraph four of the said Law, a private person may contest and appeal the actual action of an institution like an administrative act.

The Constitutional Court has already recognised that recourse to an administrative court is to be regarded as a general remedy for protection. Not only the Constitutional Court, but also other courts assess the compliance of legal norms with legal norms of higher legal force within the limits of their competence, including also the administrative court within the framework of consideration of a case has competence to assess the compliance of applicable legal norms with legal norms of higher legal force(see, for example, Para 15.1 of the Decision of the Constitutional Court of 17 October 2019 on termination of proceedings in Case No 2018-19-03).

Thus, the Applicant was generally able to defend his rights by means of general remedies, the use of which the Constitutional Court generally considers to be a precondition for initiating a case on a constitutional complaint.

14.2.2. As concluded above, according to the contested norms, voting in the election of local government council is possible only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. Thus, the contested norms are mandatory and are formulated in an unambiguous manner, as well as they do not allow for exceptions, and the Applicant is in a situation typical for their scope.

14.2.3. The *Saeima* also notes that the Administrative Regional Court has already assessed the same case as the present case and in its judgement of 7 July 2016 in case No. A420278914 concluded that a person who are subject to arrest as the security measure must be guaranteed the right to vote in the electoral district in the electoral roll of which he or she is registered, even if he or she is in prison in the territory of another electoral district(see the Case-file, volume 4 Page 33 and Volume 7 Pages 147–148). In its additional explanations, the *Saeima* also refers to the judgement of the District Administrative Court of 11 June 2015 in Case

No. A420324614 and points out that the fact that a person is subject to arrest is not a ground for excluding such a person from the electoral register (*see the Case-file vol. 7 Pages 147–148*).

According to the two above-mentioned judgements of administrative courts, the Constitutional Court concludes that the person applied to the court after the elections of local government councils had already taken place. The Ombudsman rightly points out that the administrative court practice referred to by the *Saeima* in its reply and additional explanations refers to the recognition of an infringement and not to the mechanism of ensuring the rights of a person. Even if the administrative courts recognise the right of arrested persons to participate in the election of local government councils even if they are located outside the territory of the electoral district, the question of how to organise this voting in prisons and polling stations remains unsettled (*see Case-file, volume 8 page 51*). The *Saeima* also agrees that it is not possible to provide the Applicant with the possibility to vote in the election of local government councils that have already taken place (*see the Case-file, volume 7 page 151*).

According to the *Saeima*, it is possible to apply interim remedies in administrative proceedings, and an interim remedy may also be a court decision which, pending a court judgement, replaces the actual action of the requested authority, i.e. a court decision which would ensure the right of a person to participate in the election of local government council (*see the Case-file, volume 4 Page 34 and Volume 7 page 149*). However, the *Saeima* has not provided any case law in the case under review that such a case has occurred in the practice of administrative courts and that the interim measure has been an effective remedy. It follows from the decisions of the administrative courts referred to by the *Saeima* that the interim measure was not applied and the person was not guaranteed the right to vote in the election of relevant local government council.

It is therefore not possible to confirm that a person who are subject to arrest and who is in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which he or she is registered has access to such real and effective general remedies as would enable him or her to exercise his right to

vote in the election of local government councils. Thus, in the case under review, the submission of an application to an administrative court within the meaning of Section 19.², Paragraph 2 of the Constitutional Court Law cannot be regarded as an opportunity to defend the person's rights by means of general legal remedies. This means that the only real and effective remedy that a person who are subject to arrest as the security measure and who is not located in the territory of the electoral district in the electoral roll of which he or she is registered, can use to exercise his or her right to vote in the election of local government councils is to submit an application to the Constitutional Court.

Consequently, the infringement of the Applicant's fundamental rights resulted directly from the contested norms and he had no real and effective possibilities to defend his fundamental rights, the use of which would be a precondition for fulfilment of the requirements of Section 19.², Paragraph two of the Constitutional Court Law. Accordingly, the request of the *Saeima* to terminate the proceedings in the present case has to be rejected.

15. Article 101 of the Constitution determines the following: “Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.

Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language.”

The application does not contest the compatibility of the legal norms with the whole Article 101 of the *Satversme*. The present case does not concern the right of citizens of the European Union permanently residing in Latvia to participate in the work of local governments, nor does it concern the working language of local governments.

Thus, the Constitutional Court will assess compliance of the contested norms with Article 101, Paragraph One and the first sentence of Paragraph two of the *Satversme*.

16. The applicant is a defendant who was subjected to a security measure – arrest – and he requests the Constitutional Court to examine the contested norms insofar as they denied him

from participation in the election of local government council in the electoral district in the electoral roll of which he was registered.

16.1. When examining a case initiated on the basis of a constitutional complaint, the Constitutional Court, on the one hand, must take into account the requirements of the Constitutional Court Law and must assess the situation to the extent necessary for the protection of the fundamental rights of the person who filed the constitutional complaint, but, on the other hand, must respect the principle of equality and assess the situation of all persons who are in equal and comparable circumstances with the applicant. If the legal provision contested in the constitutional complaint relates to a wide range of different situations, the Constitutional Court specifies to what extent it will assess the contested provision (*see, for example, Judgement of the Constitutional Court of 17 December 2020 in Case No 2020-18-01, Paragraph 13*). This is related to the fact that the principle of the rule of law requires that the Constitutional Court, in accordance with its competence, ensures the existence of such a legal system in which regulatory framework incompatible with the Constitution or other legal provisions of higher legal force is eliminated to the fullest possible extent (*see, for example, Judgement of the Constitutional Court of 24 November 2017 in Case No. 2017-07-01, Paragraph 12.2*). Thus, in the case under review, it is necessary to specify to what extent and in relation to which persons the constitutionality of the contested norms is to be assessed.

16.2. The application challenges Section 32, Paragraphs four and eight of the Law on the Election of Local Government Councils. Section 32, Paragraph eight of the Law on the Election of Local Government Councils stipulates that for the suspects, accused or defendants who are subject to arrest as the security measure, voting shall be organised at the location of such persons in accordance with the procedures laid down in Paragraphs one and four of this Section. In its turn, Section 32, Paragraph four of this Law states that voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered. Thus, the contested norms regulate the procedure

of participation in the election of local government councils of persons with different legal status involved in criminal proceedings – suspects, accused or defendants who are subject to arrest as the security measure.

Taking into account the system of the Law on the Election of Local Government Councils, all the persons referred to in Section 32, Paragraph Eight of this Law – suspects, accused and defendants who are subject to arrest as the security measure – irrespective of the criminal procedural status of these persons, are subject to the same procedure of participation in election of local government councils, as well as the restriction contained in the contested norms.

The Constitutional Court recognises that an assessment of the impact of the contested norms on all persons who thus fall within the scope of Section 32, Paragraph eight of the Law on the Election of Local Government Councils and who are subject to arrest as the security measure, and who thus fall within the scope of the contested provision, ensures a comprehensive and objective examination of the case, procedural economy, as well as the existence of a legal system, in which a regulation which is incompatible with the Constitution or other legal provisions of higher legal force is eliminated as completely and comprehensively as possible (*cf. Judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 12.2*). In its reply, the *Saeima* expressed its opinion on the application of the contested norms and indicated that the issue in the present case is the right of a person who is subject to arrest as the security measure, to vote in the election of local government council in the electoral district in the electoral roll of which he or she is registered, if he/she is in prison in the territory of another electoral district. In its additional explanations, the *Saeima* indicated that the contested norms concern a narrow and specific circle of arrested persons, and has not addressed the aspects of application of these norms separately in relation to arrested persons with different criminal procedural status (*see the Case-file, volume 4 Page 33 and Volume 7 page 147 and 151*). The constitutionality of the contested norms has also been assessed in such an aspect in the opinions of the external parties, i.e., the restriction of the right to elect the local government councils has been examined in relation to all persons who are subject to arrest as the security measure, within the scope of the contested norms (*see, for example, the opinion of the Ombudsman in the case materials, volume*

8 page 49.-54 and the opinion of the Central Electoral Commission in Volume 8 of the case materials pages 10-13).

The Constitutional Court concludes that the materials contained in the case file are sufficient to assess the constitutionality of the contested norms with regard to all persons falling within the scope of the contested norms who are subject to arrest as the security measure, regardless of whether the person concerned who is remanded in custody is a suspect, an accused or a defendant.

Both contested norms – Section 32, Paragraphs four and eight of the Law on the Election of Local Government Councils – regulate the procedure by which the persons who are subject to arrest as the security measure, participate in election of local government councils, and are thus closely interrelated. Therefore, the Constitutional Court assessed the constitutionality of these norms as a common legal framework.

Consequently, the Constitutional Court will assess the compliance of the contested norms as a single legal regulation with Article 101, Paragraph one and the first sentence of Paragraph two of the *Satversme*, insofar as these norms deny suspects, accused or defendants who being imposed custody as a restraint measure from voting in the election of local government councils, if these persons are in a place of incarceration located outside the territory of the electoral district in the electoral roll of which these persons are registered.

17. Article 101, Paragraph one of the *Satversme* states: “Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service.” First sentence of Article 101, Paragraph two of the *Satversme* provides: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia.”

The Constitutional Court has already recognised that the ways of exercising the right to participate in the activities of local governments contained in Article 101 of the *Satversme* may not be formal. They must be effective, because only effective participation is consistent with the principle of popular sovereignty. Consequently, this Article establishes the obligation of the state not only to guarantee the citizen the right to participate in the election of local government, but also to create

preconditions for the citizen to participate in the activities of the state and local governments (*see Paragraph 11 of the Judgement of the Constitutional Court of 29 June 2018 in Case No. 2017-32-05*). The principle of local government implies that the local council is, in institutional terms, a directly democratically legitimised organ of state power. In addition, the local government council decides on all the most important issues in the municipality (*see Paragraph 21 of the Constitutional Court's judgement of 29 June 2018 in Case No 2017-32-05*). The right of every citizen to participate in the election of local government councils is therefore particularly important in a democratic state governed by the rule of law. With regard to persons detained in remand prisons, the Constitutional Court has indicated that it should be examined whether the restrictions included in the legal norms are permissible and do not infringe the fundamental rights of detained persons (*cf. paragraph 3 of the Conclusion Part of the Constitutional Court's judgement of 22 October 2002 in Case No. 2002-04-03*).

17.1. In clarifying the content of the fundamental rights set out in the *Satversme*, Latvia's international human rights obligations should also be taken into account. Article 89 of the *Satversme* provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. According to this Article the aim of the legislator is to achieve harmony between the human rights norms enshrined in the *Satversme* and the norms of international law. The international human rights norms binding on Latvia and the practice of their application at the level of constitutional law also serve as a means of specification to determine the content and scope of fundamental rights and other general principles of law, insofar as this does not lead to a reduction of the protection of fundamental rights included in the *Satversme* (*see, for example, paragraph 16.2 of the Constitutional Court's judgement of 2 December 2021 in Case No. 2021-07-01*).

Article 101, Paragraph one of the *Satversme*, *inter alia*, is to be concretised in conjunction with Article 25 of the International Covenant on Civil and Political Rights (hereinafter - the Covenant) (*cf., for example, Paragraph 13 of the Constitutional Court judgement of 15 June 2006 in Case No. 2005-13-0106*).

Article 25 of the Covenant provides: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without

unreasonable restrictions: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors [..]”. The UN Human Rights Committee, interpreting Article 25 of the Covenant, has recognised that states must take effective measures to ensure that all persons entitled to vote are able to exercise that right (*see: UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25 of the Covenant on Civil and Political Rights), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para 11*).

The right of citizens to participate in the activities of the State and local governments, as established in the *Satversme*, should also be concretised in conjunction with the European Charter of Local Self-Government (hereinafter - the Charter)(*cf. see the Constitutional Court's Decision of 16 April 2008 on discontinuing proceedings in Case No. 2007-21-01. Paragraph 7*).

The preamble to the Charter recognises that the local authorities are one of the main foundations of any democratic regime, while the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe. The Charter aims to ensure that the obligations it sets out are, as far as possible, part of the constitutional framework of States and thus that the relevant provisions are respected, *inter alia*, through constitutional review(*cf. (Constitutional Court Judgement of 12 May 2021, in Case No. 2020-37-0106, Paragraph 21.2)*).

17.2. The first sentence of Article 101, Paragraph two of the *Satversme* defines the persons who are entitled to elect local governments in the procedure established by law, i.e. they are Latvian citizens and citizens of the European Union who permanently reside in Latvia. The Constitutional Court has already recognised that it is within the competence of the legislator to determine what is considered as “a fully fledged citizen” within the

meaning of the first sentence of Article 101, Paragraph two of the *Satversme* (*see Paragraph 13.2 of the Judgement of the Constitutional Court of 15 June 2006 in Case No. 2005-13-0106*). Consequently, the notion “a fully fledged citizen” used in

the *Satversme* must be read in conjunction with the Law on the Election of Local Government Councils.

The scope of persons who have the right to elect the local government or to whom this right is restricted is specified in Articles 5 and 6 of the Law on the Election of Local Government Councils. According to Section 5, Paragraph one of the said Law, in the Republic of Latvia the following persons have the right to elect the council: a citizen of Latvia; a citizen of the European Union who is not a Latvian citizen but who has been registered in the Population Register. Paragraph two of this Article provides: such person has the right to vote who has reached 18 years of age on the election day, is registered in the electoral register and has been registered at his or her place of residence in the administrative territory of the relevant local government for at least 90 days before the election day, or such person who owns immovable property which is registered in the administrative territory of the relevant local government in accordance with the procedures specified by law and to whom any of the restrictions referred to in Section 6 of this Law does not apply. Article 6 defines the persons who have no right to elect the council in the Republic of Latvia. Pursuant to Paragraph 2 of this Article, persons who are serving a sentence in places of deprivation of liberty have no right to elect the council in the Republic of Latvia, and pursuant to Paragraph 3 – persons who do not have the right to vote in the Member State of the European Union of which they are citizens. Thus, a citizen of Latvia, who is subject to arrest as the security measure, was a fully fledged citizen of Latvia within the meaning of the first sentence of Article 101, Paragraph two of the *Satversme* and has the right to elect the local government council.

17.3. The Law on the Election of Local Government Councils provides for the right to vote for the suspects, accused or defendants who are subject to arrest as the security measure. Section 32, Paragraphs one and four of the Law on the Election of Local Government Councils shall apply to the voting procedure of the persons concerned. Pursuant to Paragraph one of this Article, if certain voters are unable to come to the polling premises due to their state of health, the polling station commission shall, on the basis of a written submission from such voters or their authorised person which shall be registered in a special log, organise voting at the location of such voters, ensuring a secret ballot. In its turn, Section 32, Paragraph four of this Law states as follows: “Voting at the location of a voter shall take place

only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.”. According to the above-mentioned legal regulation, persons who are subject to arrest as the security measure may vote only in the elections of six local government councils – Riga City, Liepaja City, Daugavpils City, Jelgava City, Olaine Municipality and Valmiera City - as there are no remand prisons in other local governments in Latvia. Thus, the contested norms prevent arrested persons from participating in election of local government council, while staying in prison, if these persons are not located in the territory of the electoral district in the electoral roll of which they are registered.

The Applicant is a citizen of Latvia and at the time of the elections to the local government councils on 5 June 2021 had not been convicted by a court judgement which had entered into force. Therefore, he is not subject to the restriction of the right set out in Section 6, Paragraph two of the Law on the Election of Local Government Councils. By the summary judgement of the the Judicial Panel of Criminal Cases of Riga Regional Court the Applicant is subject to arrest as the security measure and during the period of the elections to the above-mentioned local government councils he was detained in the Riga Central Prison. The applicant was registered on the electoral roll of the State City of Ventspils, and his electoral district was the municipality of that state city. Thus, the contested norms prevented him from voting in the elections of Ventspils State City local government.

The Constitutional Court finds that the contested norms restrict the right to participate in elections of the local government council of both suspected and accused persons and defendants who are subject to arrest as the security measure, and whose location does not coincide with the territory of the electoral district in the electoral roll of which they are registered,

Consequently, the contested norms resulted in a restriction on the fundamental rights contained in Article 101, Paragraph One and the first sentence of Paragraph Two of the Satversme for suspects, accused and defendants being imposed custody as a restraint measure and located in a place of incarceration outside the territory of the electoral district in the electoral roll of which these persons are registered.

18. The right contained in Article 101, Paragraph one and first sentence of Paragraph Two of the *Satversme* to participate in the election of local government councils may be subject to restrictions in circumstances provided for by law, but the Constitutional Court must assess whether the restriction is justified, i.e: 1) it is established by law; 2) it has a legitimate aim; 3) it is proportionate with a legitimate aim (*see, for example, Judgement of the Constitutional Court of 5 March 2003 in Case No. 2002-18-01, Concluding Part, Paragraph 3*).

19. In order to evaluate whether the limitation of fundamental rights contained in the contested norms is determined by a law adopted in due order, the Constitutional Court must check:

1) whether the law is adopted in compliance with the procedures provided for in laws and regulations;

2) whether the law has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;

3) the wording of the law is sufficiently clear to allow a person to understand the content of the rights and obligations arising there from and to predict the consequences of the application thereof (*see Judgement of the Constitutional Court of 11 June 2021 in Case No 2020-50-01, paragraph 15*).

The restriction of fundamental rights must be established in the legislative process which complies with the principle of good lawmaking (*see Judgement of the Constitutional Court of 6 April 2021 in Case No. 2020-31-01, paragraph 15*). The Constitutional Court has recognised that only substantial infringements of the procedure are grounds for recognising that the adopted act does not have legal force (*see Paragraphs 18.1 and 18.5 of the Judgement of the Constitutional Court of 6 March 2019 in Case No. 2018-11-01*).

19.1. Although the contested norms should be assessed as a single legal regulation, the Constitutional Court must examine whether each of the norms has been adopted in due procedure.

19.1.1. “Law on the Election of the City Council, District Council and Parish Council” adopted on 13 January 1994 included a voting condition related to being in the territory of the respective local government. The law originally provided for special voting arrangements for voters who, due to the state of health, were unable

to attend polling stations. Article 32, Paragraph three of this Law provided for: “Voting at the location of a voter shall take place only if the voter is located in the administrative territory of the city, district or parish concerned.” In order to maintain this voting condition, the above mentioned provision was terminologically clarified and reworded several times by the Law of 6 April 2000 on “Amendments to the Law on the Election of the City Council and Parish Council” and by the Law of 11 October 2004 on “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council”

Section 32, Paragraph four of the Law on the Election of Local Government Councils was adopted in its current wording by the Law of 11 June 2020 “Amendments to the Law on the Election of the Republic City Council and Municipality Council”. Draft Law No 617/Lp13 "Amendments to the Law on Elections to the Republic City Council and Municipality Council" (hereinafter - Draft Law No 617/Lp13) was submitted to the *Saeima* on 12 March 2020 and examined in three readings. During the examination of draft law No. 617/Lp13, a number of proposals were received, which were discussed which were discussed at the meetings of the 13th Saeima's State Administration and Local Government Commission(*see the Case-file, volume 7 pages 88-123*). Those proposals did not affect the restriction of the fundamental right at issue in the present case.

The Law "Amendments to the Law on Elections to the Republic City Council and Municipality Council" was adopted on 11 June 2020 and promulgated on 22 June 2020 in the official gazette “Latvijas Vēstnesis” No. 119C.

Thus, Section 32, Paragraph four of the Law on the Election of Local Government Councils has been promulgated in accordance with the procedure established by the *Satversme* and the Rules of Procedure of the *Saeima*.

19.1.2. Section 32, Paragraph eight of the Law on the Election of Local Government Councils was adopted by the Law of 11 November 2004 on “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council”. Draft Law No 893 “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council” (hereinafter - Draft Law No. 893) was submitted to the *Saeima* on 12 August 2004 and examined in three readings. During the consideration of the draft law, proposals prepared by the Legal Bureau of the *Saeima*, as well as by the members of the *Saeima*, were received and

discussed at the 8th Saeima's State Administration and Local Government Commission(see the Case-file, volume 5 pages 89-101 and volume 6 pages 47-59). Those proposals did not concern the restriction of the fundamental right at issue in the present case.

The Law “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council” was adopted on 11 November 2004 and promulgated on 25 November 2004 in the official gazette “Latvijas Vēstnesis” No. 187.

Thus, Section 32, Paragraph eight of the Law on the Election of Local Government Councils has been promulgated in accordance with the procedure established by the *Satversme* and the Rules of Procedure of the *Saeima*.

The parties to the case have not raised any objections regarding the procedure for promulgation of the contested norms. The Constitutional Court also has no doubts that the contested norms have been promulgated and made available in accordance with the requirements of normative legal enactments, as well as have been formulated with sufficient clarity.

19.2. The Constitutional Court has recognised that a legal provision which restricts the fundamental rights of a person must be both comprehensible and predictable. In particular, the legal provision must be worded with sufficient precision and clarity. The norm must be formulated in such a way as to allow persons to clearly foresee the scope and meaning of application of the provisions(see, for example, *Para 15.2 of the Judgement of the Constitutional Court of 30 March 2011 in Case No 2010-60-01*).

Section 32, Paragraph eight of the Law on the Election of Local Government Councils stipulates that for the suspects, accused or defendants who are subject to arrest as the security measure, voting shall be organised at the location of such persons in accordance with the procedures laid down in Paragraphs one and four of this Section. In accordance with Section 32, Paragraph four of the Law on the Election of Local Government Councils states as follows: “Voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.”. From the contested norms it is possible to deduce the procedure for the organisation of elections of local government councils for persons who are subject to arrest as the security measure.

Thus, a person may understand the content of the rights and obligations arising from the contested norms and foresee the consequences of the application of those norms.

19.3. According to the Applicant, the contested norms are contrary to the principle of good legislation, because the legislator has not verified their compliance with the *Satversme*, taking into account the judgements of the Constitutional Court and the European Court of Human Rights. Following the judgement of the Constitutional Court of 5 March 2003 in Case No. 2002-18-01 "On Compliance of Section 2(2) of Saeima Election Law with Articles 6, 8 and 91 of the Satversme of the Republic of Latvia" (hereinafter - the judgement in Case No. 2002-18-01) and the judgement of the European Court of Human Rights of 6 October 2005 in the case "*Hirst (no. 2) v. The United Kingdom*", Application No. 74025/01, (hereinafter referred to as the judgement in the case "*Hirst (no. 2) v. The United Kingdom*"), the legislator, by the Law of 26 February 2009 "Amendments to the Law on the Election of the *Saeima*", provided for a special procedure under which voters who are subject to arrest as the security measure or who are serving a sentence related to deprivation of liberty may participate in elections of the *Saeima* in a place of imprisonment. The Applicant holds that the legislator should have revised the Law on the Election of Local Government Councils by providing for a similar procedure – without restrictions – also for elections of local government councils.

The judgement in Case No. 2002-18-01 assessed the restrictions on the right to vote in the *Saeima's* elections, without considering the restrictions on the elections of local government councils. The administration and organisation of elections of local government council is carried out by the election commission of the local government concerned, which is responsible only for the elections of its local government council. The administrative territory of each municipality constitutes a separate electoral district, and at the time of adoption of the judgement there were 552 local government electoral districts in Latvia(*see: Central Election Commission statistics, available at: www.cvk.lv*). A voter in the election of local government council has the right to vote in the electoral district where he/she has his/her registered residence 90 days before the election day or in the municipality where he/she owns immovable property. According to the Law on the Election of the *Saeima*, Latvia is divided into five *Saeima's* electoral districts. A person has the right to vote in any electoral district and choose any polling station in Latvia or abroad.

Thus, the conduct and organisation of elections of the *Saeima* and elections of local government councils differ significantly. Consequently, the conclusions drawn in the Judgement in Case No. 2002-18-01 cannot be automatically applied to the restriction of the fundamental right set out in Section 32, Paragraph eight of the Law on the Election of Local Government Councils. On the other hand, the judgement in Case “*Hirst (no. 2) v. The United Kingdom*” was concerned with the absolute prohibition of convicted persons from taking part in parliamentary elections.

The Constitutional Court does not find any significant violations of the legislative procedure in the process of adoption of the restriction on fundamental rights established by the contested norms.

Therefore, the restriction on fundamental rights contained in the contested norms had been established by a law adopted in due procedure.

20. Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, namely, i.e. the restriction must be imposed for the sake of important interests – a legitimate aim (*see, for example, Judgement of the Constitutional Court of 13 October 2015 in Case No 2014-36-01, paragraph 18*). Article 116 of the *Satversme* stipulates that the rights “may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.” Moreover, the Constitutional Court must assess whether such a restriction has a legitimate aim, taking into account the current level of democratic development of society and the State (*cf. paragraph 20.1 of the judgement of the Constitutional Court of 29 June 2018 in Case No. 2017-25-01*).

Article 101 of the *Satversme* provides for fundamental rights that serve as the basis for the existence of a democratic order and are aimed at ensuring the legitimacy of the democratic state order. It is the right of every citizen of Latvia to participate in the activities of the State and local governments in the manner provided for by law (*cf. paragraph 1 of the Conclusion Part of the Constitutional Court's judgement of 30 August 2000 in Case No 2000-03-01*). Therefore, in particular, a restriction on the right to vote in the election of local government council must be determined for the sake of important public interests – a legitimate aim.

In the Constitutional Court proceedings, the obligation to present and substantiate the legitimate aim of such restrictions lies, first of all, with the institution which issued the contested provision, which in this particular case is the *Saeima* (see, for example, *Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01, Paragraph 20*). In its additional explanations, the *Saeima* indicated that the Applicant was obliged to use the general remedies before applying to the Constitutional Court, and therefore it had no grounds to comment on compliance of the contested norms with Article 101 of the *Satversme*, since these norms did not entail any restriction of the right established in the said Article of the *Satversme* (see the *Case-file, volume 7. page 150*). Thus, neither in the reply nor in the additional explanations has the *Saeima* indicated the legitimate aim of the restriction of the right to elect the local government council established in the contested norms.

The Constitutional Court has repeatedly recognised that if the *Saeima's* reply fails to indicate what the legitimate aim of the restriction on fundamental rights established by the contested norm is, the Constitutional Court is *ex officio* obliged to objectively assess all the circumstances of the case and establish the existence of such an aim or – on the contrary – its absence (see, for example, *Para 23 of the Constitutional Court's judgement of 8 June 2007 in Case No. 2007-01-01 and Para 15 of the judgement of 3 April 2008 in Case No 2007-23-01*).

20.1. The Applicant states that the contested norms do not have a legitimate aim. the purpose of Section 32, Paragraph four of the Law on the Election of Local Government Councils is probably to facilitate the work of the election commissions by relieving them from the obligation to organise the election of local government councils for those voters who are in prison located outside the territory of the respective electoral district (see *vol. 1 of the case file. page 15*). According to the Applicant, the aim to facilitate the work of the executive power does not, in itself, comply with any of the legitimate aims mentioned in Article 116 of the *Satversme*. However, the purpose of Section 32, Paragraph eight of the Law on the Election of Local Government Councils is to grant the right to vote in the election of local government councils to arrested persons in accordance with the judgement in Case No. 2002-18-01 and the judgement in Case “*Hirst (no. 2) v. The United Kingdom*”.

The annotation of the draft law of 11 November 2004 “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council”

states that “the range of subjects who have the right to participate in local government elections is expanded, as well as the limitations of active and passive election rights are clarified”. The law in question, *inter alia*, provided for the right of arrested persons to vote in the same way as had been provided until the entry into force of the law only for persons who, because of their health, could not be present at the polling stations. Thus, after the entry into force of the Law of 11 November 2004 “Amendments to the Law on the Election of the City Council, Municipality Council and Parish Council”, the provisions of Section 32, Paragraphs four of the Law on the Election of Local Government Councils apply both to arrested persons and to voters who cannot attend the polling stations due to their state of health. Namely, voting at the location of a voter shall take place only if the voter is located in the territory of the electoral district in the electoral roll of which he or she is registered.

The annotation of the draft law includes a reference to the Concept of Improvement of the Election System of the Republic of Latvia, approved by the Cabinet Order No. 658 of 24 October 2003. The aim of this concept is to introduce pre-registration of voters and establish the electoral register. The concept states that the current procedure for ensuring the rights of voters – i.e. persons who, due to their state of health, are unable to attend polling stations, or persons who are subject to arrest as the security measure – who are physically unable to attend a polling station on election day – are maintained.

The legislator, by maintaining the restriction of the fundamental right included in the contested norms, has not indicated and justified the legitimate aim of this restriction. It is also impossible to deduce this from the minutes and audio recordings of the 8th Saeima's State Administration and Local Government Commission meetings(*see Volume 5 of the Case file*). *pages 62-88*). The restriction of the right to vote in the election of local government councils established by the contested norms for persons who are subject to arrest as the security measure ensures only savings of state and local government resources.

20.2. The Ombudsman notes that the actual difficulties in ensuring the participation of persons who have been imprisoned for a long period of time in the election of local government councils should not be identified with a legitimate aim(*see vol. 8 of the Case file pages 49-54*). In the framework of the Ombudsman's examination of the case on the right of arrested persons to participate in the election

of local government councils in 2013, the Prison Administration pointed out practical difficulties in ensuring the right of arrested persons to participate in the election of local government councils. The Administration has explained that voting on the lists of candidates for all local government councils should be organised in prisons. This would complicate the electoral process, as the prison administration would have to prepare all the electoral rolls, i.e. those corresponding to each administrative territory. The preparation of such voters' lists would be time-consuming and would entail the risk that they might not include persons who have been imprisoned shortly before the election day (*see letter from the Prison Administration to the Ombudsman in the Case file, volume 8 page 58*). The Ministry of Justice, for its part, has pointed out that the legitimate aim of the restriction could be “to guarantee, as far as possible, the right of persons to participate in elections, while at the same time balancing the exercise of this right with the actual possibilities of ensuring the conduct of the elections”. The Ministry has explained that due to the large number of electoral districts in the election of local government councils, it is technically complicated and difficult to ensure voting in one location for the lists of candidates of all electoral districts (*see the letter of the Ministry of Justice to the Ombudsman, vol. 8 of the Case file, page 61 and 75*). In his opinion in the above-mentioned examination case, the Ombudsman concluded that the regulation contained in the Law on the Election of Local Government Councils regarding the procedure for arrested persons to vote in the election of local government councils does not have a legitimate aim (*see vol. 8 of the case file pages 70-71*).

The Ministry of Justice, in its opinion submitted in the present case, has indicated that the right to vote must be practicable without unjustified restrictions and acknowledges that the right of arrested persons to participate in the election of local government councils is limited due to the lack of technical solutions (*see vol. 8 of the case file page 40*). The Ministry also provided information on its draft law “Amendments to the Law on the Election of Local Government Councils”, which provides for a procedure for persons who are subject to arrest as the security measure to exercise their right to participate in the election of local government councils by postal voting. On 22 February 2022, the *Saeima* adopted the above-mentioned draft law in the first reading (*see draft law No 1326/Lp13 “Amendments to the Law on the*

Election of Local Government Councils”, available in the Saeima Register of Draft Laws).

20.3. In a democratic state governed by the rule of law, a situation in which the right of citizens to vote in election of local government council is restricted without a legitimate objective is not permissible. The Constitutional Court has already recognised that the right to vote is recognised as the most important political right (see paragraph 1 of the Conclusion Part of the Judgement of the Constitutional Court in Case No. 2002-18-01 of 5 March 2003). The right to vote ensures representation of citizens in the activities of national and local governments, and is one of the cornerstones of a democratic state. Every citizen's right to vote matters. Every citizen's vote is a sign of respect and civic responsibility towards their country. It is essential for every citizen to be able to exercise his or her right to vote, and the state has a duty to ensure that the right to participate in election of local government councils is practicable without unjustified restrictions.

Thus, in the present case it cannot be concluded that the restriction of fundamental rights established by the contested norms would protect any important public interests.

Since the restriction on fundamental rights established in the contested norms did not have a legitimate aim, it did not comply with Article 101, Paragraph one and the first sentence of Paragraph two of the *Satversme*.

21. The Constitutional Court draws the legislator's attention to the fact that Section 32, Paragraph four of the Law on the Election of Local Government Councils also restricted the right of persons to vote in the election of local government councils who, due to their health condition, cannot attend the polling stations. The restriction affects, *inter alia*, persons staying in medical or social care institutions during the election of local government councils. These persons may also vote in the election of local government council only if they are located in the territory of the electoral district in the electoral roll of which they are registered.

Consequently, the Saeima needs to consider the constitutionality of the restriction established by Section 32, Paragraph four of the Law on the Election of Local Government Councils also with regard to those persons who, due to their health condition, cannot attend the polling stations.

22. In accordance with Section 32, Paragraph three of the Constitutional Court Law, a legal provision which the Constitutional Court has declared inconsistent with a legal provision of higher legal force shall be deemed invalid from the day of publication of the Constitutional Court judgement, unless otherwise determined by the Constitutional Court. Section 31, Paragraph 11 of this Law, in turn, provides for the right of the Constitutional Court to indicate in its judgement the moment with which such norm shall be revoked.

The Constitutional Court has acknowledged that when deciding on the moment when the contested provision becomes invalid, it shall be taken into account that its task is to prevent the infringement of fundamental rights as much as possible (*see Judgement of the Constitutional Court of 16 December 2005 in Case No 2005-12-0103, paragraph 25*). Moreover, the court must also ensure that the situation that might arise from the moment when the contested norm loses its force does not lead to new infringements of the fundamental rights established in the *Satversme*, as well as does not cause substantial damage to the interests of the State or society (*see, for example, Para 25 of the Judgement of the Constitutional Court of 17 December 2020 in Case No 2020-18-01*).

The applicant requests that the contested norms be declared null and void with regard to him from the date of the infringement of his fundamental rights – 5 June 2021, when he was denied the right to vote in the election of local government councils. Only by declaring the contested norms null and void as of that date, it would be possible to eliminate the infringement of the Applicant's fundamental rights (*see Case-files, volume 1 pages 23-24*). In order to eliminate, as far as possible, the adverse consequences caused to the Applicant by the contested norms, with regard to the Applicant these norms, insofar as they denied the defendant who being imposed custody as a restraint measure from voting in the election of local government councils, shall be recognised as being null and void as of the moment of occurrence of infringement of fundamental rights.

The Substantive Part

On the basis of Sections 30-32 of the Constitutional Court Law, the Constitutional Court

decided:

1. To recognise Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils, insofar as these norms deny suspects, accused or defendants who being imposed custody as a restraint measure from voting in the election of local government councils, if these persons are in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which they are registered, as being incompatible with Article 101, Paragraph One and the first sentence of Paragraph Two of the *Satversme* of the Republic of Latvia.

2. With regard to Mr Aivars Lembergs – to recognise Section 32, Paragraphs Four and Eight of the Law on the Election of Local Government Councils, insofar as these norms deny him from voting in the election of local government councils, if he is in a place of incarceration located beyond the territory of the electoral district in the electoral roll of which he is registered, as being incompatible with Article 101, Paragraph One and the first sentence of Paragraph Two of the *Satversme* of the Republic of Latvia as of the moment of occurrence of infringement of his fundamental rights.

The Judgement is final and not subject to appeal.

The Judgement shall enter into force on the day of its publication.

Chairman of the court hearing

Aldis Laviņš