THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT
on behalf of the Republic of Latvia
Riga, 12 March 2021
in Case No 2020-37-0106

The Constitutional Court composed of the Chairperson of the court hearing Aldis Laviņš, Justices Sanita Osipova, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

with participation of Artis Stucka as the authorised representative of the Applicant – the Limbaži Regional Council and Matīss Šķiņķis as the authorised representative of the Applicant – the Ikšķile Regional Council,

Lauris Liepa as the authorised representative of the body issuing the contested provision – *the Saeima*,

with Līva Ošeniece as the Secretary of the court hearing,

pursuant to Article 85 of the Constitution of the Republic of Latvia and Sections 16(1) and 16(6), Section 17(1)(7), Section 19(1) and Section 28 of the Constitutional Court Law,

at the open court hearing held on 13, 20, 21, 26 January and 10 February 2021 with participation of parties to the Case examined the Case

'On compliance of sub-paragraphs 28.2, 28.19 and 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas with Articles 1 and 101 of the Constitution of the Republic of Latvia, Articles 4(3) and (6) and Article 5 of the European Charter of Local Self-Government'.

Statement of Facts

1. On 18 December 2008, *the Saeima* adopted the Law on Administrative Territories and Populated Areas that came into force on 31 December 2008. According to sub-paragraph 55.5 of Annex 2 'Regions and Units of their Territorial Division' to this Law, the Limbaži Region, *inter alia*, comprised Skulte Municipality. Furthermore, according to paragraph 35 of the Annex, the town of Ikšķile and Tīnūži Municipality were part of the Ikšķile Region.

On 10 June 2020, *the Saeima* adopted the Law on Administrative Territories and Populated Areas (hereinafter – the Law on Administrative Territories) that came into force on 23 June 2020. Pursuant to Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law (hereinafter – Annex to the Law on Administrative Territories), there are 42 administrative territories in Latvia. Pursuant to sub-paragraphs 28.2 and 28.19 of the Annex, the town of Ikšķile and Tīnūži Municipality are part of the Ogre Region. Furthermore, pursuant to sub-paragraph 35.4 of the Annex, Skulte Municipality is part of the Saulkrasti Region.

In accordance with the first sentence of paragraph 2 of the Transitional Provisions of the Law on Administrative Territories, the existing local governments of republican towns and regions continue to exercise their functions and tasks until the first session of the local council elected in the local government elections held in 2021 to be summoned on 1 July 2021 in accordance with the procedure established by this Law.

2. The Constitutional Court has initiated numerous cases with regard to compliance of provisions of the Annex to the Law on Administrative Territories with provisions of superior legal force, among them Case No 2020-37-0106 following an application of the Limbaži Regional Council and Case No 2020-38-0106 following an application of the Ikšķile Regional Council.

In order to expedite more thorough proceedings under the Cases, on 26 October 2020, Cases No 2020-37-0106 and No 2020-38-0106 were joined in a single case, pursuant to Section 22 of the Constitutional Court Law. Joined Case No 2020-37-0106 has been assigned the title 'On compliance of sub-paragraphs 28.2, 28.19 and 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas with Articles 1 and 101 of the Constitution of the Republic of Latvia, Articles 4(3) and (6) and Article 5 of the European Charter of Local Self-Government'.

3. In the opinion of **the Applicants** – **the Limbaži Regional Council and the Ikšķile Regional Council** (hereinafter – the Applicants) – provisions of the Law on Administrative Territories with regard to the reform of these regions do not comply with the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution) and the European Charter of the Local Self-Government (hereinafter – the Charter).

3.1. The Limbaži Regional Council contests compliance of sub-paragraph 35.4 of the Annex to the Law on Administrative Territories with Article 1 and Article 101(1) of the Constitution and Article 4(6) and Article 5 of the Charter. In its application it states that the contested provisions separate Skulte Municipality from the administrative territory of the existing Limbaži Region and make it part of the administrative territory of the new Saulkrasti Region.

It is stated that, as a result of the administrative territorial reform held in 2008–2009, Skulte Municipality was made part of the administrative territory of the Limbaži Region on the basis of a previously prepared project for merging a number of local governments and taking into account the results of a public discussion. The Limbaži Region complied with all criteria for establishing regions set out in the Law on Administrative Territories and Populated Areas of 18 December 2008.

Skulte Municipality is part of the administrative territory of the Limbaži Region also in accordance the initial model of administrative territorial division

published on 10 April 2019 and the Draft Law 'The Law on Administrative Territories and Populated Areas' (hereinafter – the Draft Law) prepared by the Ministry of Environmental Protection and Regional Development (hereinafter – the Ministry) and submitted by the Cabinet to the *Saeima*. The Limbaži Regional Council has provided consistent support to this model and inseparability of the existing region. However, the Administrative-Territorial Reform Committee of *the Saeima* (hereinafter also – the Committee) and *the Saeima* did not take account of the opinion of the Limbaži Regional Government, and Skulte Municipality was made part of the administrative territory of the Saulkrasti Region in accordance with sub-paragraph 35.4 of the Annex to the Law on Administrative Territories.

It is alleged that, when implementing the administrative-territorial reform (hereinafter also – the reform), no study was conducted on the development and good governance in the regional government of the new Limbaži Region following the separation of Skulte Minicipality from its administrative territory. No legal considerations were made when taking this decision. It was a political decision the adoption of which was perceived by *the Saeima* as its absolute right. There were also other violations in the process of adopting the contested provision in question; what is more, it was adopted in unreasonable haste, without appropriate consultations with the Latvian Association of Local Governments (hereinafter also– the Association of Local Governments) and the local government. It is the opinion of the Limbaži Regional Council that the contested provision does not comply with the principle of self-government and the principle of a socially responsible state; the Council also notes that compliance with the subsidiarity principle was not assessed.

Inclusion of Skulte Municipality in the administrative territory of the Saulkrasti Region infringes the right and possibility of the local government of the Limbaži Region to participate objectively in the management of its public affairs enshrined in Article 101 of the Constitution. Namely, this decision unjustifiably restricts the right of the Limbaži Region local government to financial autonomy and it negatively affects the quality of local government functions and welfare of local residents.

The Limbaži Regional Council observes that the reform has changed the boundaries of the administrative territory of the Limbaži Region, wherefore public discussions should have been held to clarify the opinion of the local community of the Limbaži Region, whereas failure to hear this opinion is a significant violation of local democracy and Section 61^1(1) of the Law on Local Governments. The majority opinion learned in a public discussion, should it have been held, could have significantly influenced the majority of MPs in *the Saeima* and, possibly, they would have decided against dividing the administrative territory of the Limbaži Region.

At the court hearing, the representative of the Limbaži Regional Council Artis Stucka observed that the Limbaži Regional Council still has no information about studies justifying the necessity to divide the administrative territory of the Limbaži Region local government. There is only a very general profile of the new Saulkrasti Region available on a single page, which, moreover, has not even been sent to the local government of the Limbaži Region. Consultations with the local government were not meaningful because they were not based on high-quality proposals for establishing the new region and during these consultations no answers to the local government's questions were given. It follows that making Skulte Municipality part of the Saulkrasti Region did not involve assessment of the opinion and interests of the local government.

3.2. The Ikšķile Regional Council contests compliance of sub-paragraphs 28.2 and 28.19 of the Annex to the Law on Administrative Territories with Article 1 and Article 101 of the Constitution and Articles 4(3) and (6) and Article 5 of the Charter.

In May 2019, the Ikšķile Regional Council held an opinion poll among local residents which showed that the absolute majority of residents of the Ikšķile Region believed that the Ikšķile Region should remain a separate administrative territory. In the opinion of the Ikšķile Council, the most appropriate way of hearing local residents' opinion would have been a public discussion as set out in Section 61^1 of the Law on Local Governments. However, the local government could not have started an in-depth discussion with local residents for objective

reasons because it did not receive from the Ministry a justification for making the Ikšķile Region part of the administrative territory of the Ogre Region. The Ikšķile Regional Council addressed the responsible government bodies on numerous occasions and adopted a number of decisions in which it expressed its opinion and, *inter alia*, requested to consider preserving the Ikšķile Region as a separate administrative territory or merging it with the Salaspils Region in the course of the reform.

The Ministry only held consultations with representatives of the Ikšķile Regional Council on 18 July 2019, i.e. after the reform solution was prepared, which contradicts the procedure established by *the Saeima* Decision of 21 March 2019 on the continuation of the Administrative-Territorial Reform (hereinafter – *the Saeima* Decision of 21 March 2019) and recommendations of the European Congress of Local and Regional Authorities (hereinafter – the Congress). Only two minutes were allowed for questions and only members of the local councils were allowed to ask them. What is more, authorities involved in the reform did not reach an agreement as to the aims of the reform. A token approach was used also when hearing the opinions of representatives of the local governments at the Committee meeting prior to considering the Draft Law at second reading. The Committee meetings prior to considering the Draft Law at third reading were held against the Rules of Procedure of *the Saeima*, i.e. remotely, without discussion and without hearing any of the persons concerned. Therefore, no consultations with the local government and local residents were held in the meaning of the Constitution and the Charter.

It is the opinion of the Ikšķile Regional Council that by adopting the Law on Administrative Territories remotely, via the digital platform *e-Saeima* (hereinafter – the *e-Saeima* platform) *the Saeima* violated Article 15 of the Constitution and the Rules of Procedure of *the Saeima*. The *e-Saeima* platform cannot be construed as 'elsewhere' in the meaning of Article 15 of the Constitution. At a time when the threat caused by Covid-19 was higher, *the Saeima* held its meetings in Riga, in *the Saeima* building. Whereas on 10 June 2020, when the Law on Administrative Territories was passed at third reading, the emergency

situation declared by the Cabinet had already ended, but MPs were not at the same location at the time. In these circumstances *the Saeima* must not have considered draft laws and issues whose consideration was not urgent for objective reasons. What is more, there were technical issues when the Draft Law was considered at third reading that did not allow to hear properly one of MPs who argued in favour of the submitted proposals.

Adoption of the contested provisions with regard to the Ikšķile Region also violated elements of the principle of good legislation specified by the Constitutional Court, namely, the legal provisions were not justified and experts' opinions were not taken into account. Likewise, during the process of considering the Draft Law, *the Saeima* did not observe traditions it had established itself, such as the principle of proportional representation when determining the composition of the Committee. Allegedly, the procedures of *the Saeima* were violated intentionally and arbitrarily. Analysis of the violations taken as a whole reveals that these violations are significant and there is a high probability that if there had been no such violations the contested provisions in respect of the Ikšķile Region would not have been adopted.

Adoption of the provisions contested by the Ikšķile Regional Council also violated the subsidiarity principle. The fact that the local government is self-sufficient and makes annual contributions to the fund for equalisation of local governments' finances was not taken into account. Therefore, it was not demonstrated that the local government could not exercise its functions.

The provisions contested by the Ikšķile Region are also incompatible with the proportionality principle. The local government region has a population of 10 000, which exceeds the population in many other regions established as a result of the reform. Ikšķile can be classified as an actual and promising centre of development and making it part of other regions can hinder its development. The contested provisions will not give any benefits for the society and will definitely cause damages at least for residents of the region.

At the court hearing the representative of the Ikšķile Regional Council Matīss Šķiņķis noted that the local government has been established precisely with

an aim of protecting interests of local residents. Self-organisation of residents of the local government region in a democratic process enables the most efficient management of a greater part of public affairs in the local government. *The Saeima* has a token approach to the subsidiarity principle. Inclusion of the Ikšķile Region in the new Ogre Region will deprive residents of the Ikšķile Region to get efficiently involved in resolving matters pertaining to their region, among other reasons, because their number compared with the total number of residents in the new Ogre Region will be relatively small.

4. The authority issuing the contested legislation – ***the Saeima*** – states in its rejoinders that sub-paragraphs 28.2, 28.19 and 35.4 of the Law on Administrative Territories (hereinafter – also the contested provisions) comply with Articles 1 and 101 of the Constitution, Articles 4(3) and (6) and Article 5 of the Charter.

4.1. In its rejoinders *the Saeima* elaborates on the process of preparing and discussion of the Draft Law and notes that the Committee meetings where the Draft Law was considered prior to second and third readings were open and any concerned person could take part in them.

The information about the reform, its aim and grounds are reflected in detail in numerous policy planning documents of the Cabinet, in the report on the initial impact assessment of the Draft Law (hereinafter – the Annotation), in materials available on the website of the Ministry and in other documents and studies. The Ministry also prepared a profile for each new local government indicating towns and municipalities included in its region, providing characteristics of the new administrative territory, giving a survey of matters concerning the budget, investments, workforce migration, business activity and education.

Making reference to the case law of the Constitutional Court and the Constitutional Review Chamber of the Supreme Court of Estonia, *the Saeima* observes that a local government cannot be considered ‘a state within a state’ and by adopting legal provisions in connection with the reform, including those establishing the administrative-territorial division, the legislature has broad

discretionary powers. Conversely, the powers of the Constitutional Court are restricted and it can consider the matter only insofar as legal arguments are applicable to it. It is not possible to apply the proportionality assessment methodology in the Case under examination, and it is only possible to verify if the legislature adopted the contested provisions arbitrarily. Furthermore, neither the Constitution nor the Charter stipulate the right of a local government to keeping its administrative territory determined by law unchanged or the right to request a specific administrative territory in the course of a reform. Therefore, neither the Constitution nor the Charter restrict Skulte Municipality from being part of the Saulkrasti Region or the town of Ikšķile and Tīnūži Municipality from being part of the Ogre Region.

The Saeima clarifies with regard to the Limbaži Region that the only difference from the initial model of the administrative-territorial division proposed by the Ministry is the fact that the corresponding administrative territory no longer includes Skulte Municipality. Likewise, *the Saeima* deems unjustified the argument of the Limbaži Regional Council that it infringes the financial autonomy rights of the Limbaži Region and restricts the freedom of the local government to exercise its powers.

4.2. The contested provisions were adopted in compliance with the principle of good legislation. The issue of a specific committee tasked with considering a draft law and change of the responsible committee is a matter of internal operations of *the Saeima* subject to political rather than legal considerations. The Administrative-Territorial Reform Committee was established by *the Saeima* Decision of 7 November 2019 establishing the special Administrative-Territorial Reform Committee. According to this Decision, *the Saeima* elects to the Committee one MP from each parliamentary group, thus ensuring that all parliamentary groups have equal opportunities to participate in the work of the Committee. Furthermore, neither the Constitution nor any other legal instrument contain a restriction prohibiting assigning the task of heading the Commission to the parliamentary secretary of a ministry. The restriction mentioned by the Ikšķile Regional Council, should such a restriction exist, would not have

legal grounds and it would violate the right of a Member of *the Saeima* to participate in the work of *the Saeima* set out in Article 101 of the Constitution.

At the same time, Article 15 of the Constitution permits holding *the Saeima* sittings remotely, using electronic software for the management of the sittings. Modern technologies have enabled holding *the Saeima* sittings in ways that do not require the MPs to be in the same space while they can see and hear each other; what is more, votes of the MPs are also visible. Furthermore, 'extraordinary circumstances' in the meaning of Article 15 of the Constitution can also exist when no emergency situation has been declared in the country. In the opinion of *the Saeima*, at the time when the Draft Law was considered and passed at third reading there existed circumstances that threatened its working proceedings; namely, there was a threat to the epidemiological safety caused by the spread of the Covid-19 infection.

Provisions of the Constitution and the Rules of Procedure of *the Saeima* apply in accordance with their meaning and based on the principle that the decision-making powers of government authorities and the existence of the Latvian state that is inseparable from it take priority in any circumstances. Proceedings of a sitting of *the Saeima* summoned in extraordinary circumstances and the dynamics of the circumstances in question may require deviation from legal provisions regulating sittings under normal circumstances. Possibilities provided by the *e-Saeima* platform ensure that sittings of *the Saeima* are held in essential compliance with requirements for the work of *the Saeima* derived from the Constitution and procedures of the Rules of Procedure of *the Saeima*. Anyone can see evidence of the functionality of the *e-Saeima* platform and the fact that it ensures all the most important rights of the members of *the Saeima* by watching video records of sittings available on *the Saeima* website.

4.3. Compliance of the contested provisions with Article 4(6) and Article 5 of the Charter is to be assessed in reference to each other. *The Saeima* Decision of 21 March 2019 does not determine a procedure different from provisions of the Charter, nor does it introduce new requirements to be taken into account when consulting local governments on matters related to the reform. Given that the

changes to the boundaries of administrative territories took place within the reform, in this case holding public discussions pursuant to Section 61^1(2)(1) of the Law on Local Governments was not mandatory. However, the local council was not prohibited from holding such discussions.

The Applicants referred to documents that have a status of recommendation and do not place legal obligations on the State. Consulting the local governments as early as the stage of preparing the reform and related documents is good practice; however, it does not follow from the documents referred to that only consultations held before submitting the Draft Law to *the Saeima* are compliant with the Charter. It is *the Saeima* committees where the most active work on preparing draft laws takes place. Furthermore, having heard the opinion of the local government, the responsible committee may formulate its own proposals that may result in a different administrative-territorial division. Therefore, consultations with the local governments should be assessed in the context of the entire process of implementing the reform, and it is important that consultations be held before rather than after the final decision has been made. What is more, the fact that the local government disagrees with the aims of the reform does not automatically make the contested provisions non-compliant with Article 4(6) and Article 5 of the Charter.

The Saeima clarifies that before the Committee considered the Draft Law prepared for second and third readings, every MP had access to materials received from the Limbaži Regional Council and the Ikšķile Regional Council, including the Councils' Decisions expressing their opinion on the reform. On top of that, representatives of both local councils were heard at numerous meetings of the Committee. Therefore, *the Saeima* has no doubts as to the fact that consultations with the Limbaži Regional Council and the Ikšķile Regional Council were held in accordance with requirements of the Charter and the local governments had sufficient amount of time to prepare for presenting their views at the Committee meetings.

In its rejoinder with regard to the Application of the Ikšķile Regional Council, *the Saeima* notes that the contested provisions comply with Article 4(3)

of the Charter because the subsidiarity principle deriving from it is only applicable in cases where functions of local governments are transferred to other bodies or the local governments are assigned new functions. The reform evidently can involve such redistribution of the functions, but the provisions contested in the Application of the Ikšķile Regional Council neither affect not redistribute the local government functions. Therefore, the contested provisions do not affect the subsidiarity principle and its observation is not to be assessed in the Case under examination. The reference to the Constitutional Court case law made by the Ikšķile Regional Council in connection with the observation of the subsidiarity principle is not justified.

The representative of *the Saeima* Lauris Liepa noted during the court hearing that the administrative-territorial reform should be assessed through the prism of common interests of the society as a whole. *The Saeima* Decision of 21 March 2019 comprises a political assignment for the Cabinet to proceed with the initiated administrative-territorial reform and to submit the Draft Law to *the Saeima* by 1 December 2019. The Cabinet fulfilled the assignment given to it and submitted the Draft Law to *the Saeima* on 21 October 2019. The representative of *the Saeima* reiterated that the Case under examination is to assess only the contested provisions, whereas the principle of subsidiarity is not affected by them.

5. Juris Pūce, **the representative of the joined party – the Administrative-Territorial Reform Committee of the 13th Saeima –** observed during the court hearing that the Draft Law was not considered by *the Saeima* in haste, and the Members of *the Saeima* and the local governments were able to participate in the process. The Parliament gave considerable support to the administrative-territorial reform. This is proved both by *the Saeima* Decision of 21 March 2019 that was adopted unanimously and the number of MPs supporting the Draft Law at all readings.

Prior to considering the Draft Law at second reading, the Committee meetings were held in person and the MPs had access to draft decisions and letters received from the local governments. Matters pertaining to the boundaries of the

Limbaži Region were discussed at three meetings before second reading and one additional meeting after third reading. Matters pertaining to the Ikšķile Region were discussed at two Committee meetings. The above matters were actively discussed and many MPs and representatives of *the Saeima* Legal Bureau, the Ministry and the local governments shared their opinion on them. This is proved by the minutes of the Committee meetings. The Draft Law saw specific amendments compared to the draft submitted by the Cabinet, but all of them were discussed in presence of the representatives of the respective local governments, who were given the opportunity to express their opinion. The Committee requested the opinion of the Ministry with regard to the respective amendments, and they were discussed also at *the Saeima* sittings. Hence, the proposals were duly considered in accordance with the process established by the Rules of Procedure of *the Saeima* and requirements of the Charter with regard to consultation.

6. In the opinion of the joined party – the Cabinet – the contested provisions comply with Article 1 and Article 101 of the Constitution and Articles 4(3) and (6) and Article 5 of the Charter.

Consultations play a significant part in implementing the reform, but the Charter does not prohibit preparing an initial model of the reform and holding consultations in connection with it. *The Saeima* Decision of 21 March 2019 cannot be deemed a regulatory document governing the consultation procedure. It is a political document that does not impose any specific obligations on the Cabinet with regard to the time and procedure of consultations, but rather makes a general reference to Article 5 of the Charter. Likewise, no obligation to hold consultations specifically for the residents of the local government territory follows from the Constitution or the Charter. Their involvement and hearing their opinion is desirable, so that the local council may formulate its opinion and take its decision accordingly. However, the State is under no obligation to ensure that the unwillingness of any specific local government to be joined to other local governments is taken into account.

A comprehensive justification of the reform may be based on various considerations, including those related to wider interests of the society as a whole. The establishment of a State governance system that is most efficient and rational from the point of view of resources and exercise of its functions benefits public interests. It is also necessary to take into account such circumstances as dynamics of the demographic situation, finances, costs of exercise of the functions and population migration trends in the local government territory. However, neither the Constitution nor the Charter stipulate the number and scope of local governments in a country. Once a local government has been established, it can be merged into a larger local government along with other local governments or divided into smaller local governments.

The Cabinet notes that the process of preparing the reform and adopting the corresponding draft law involves numerous choices of a legal-political nature that, in their turn, involve balancing numerous interests, and the decision-making bodies have significant discretionary powers. Among other aspects, it is necessary to take into account the rights of residents of the local government territories to receive efficient services, as well as sustainable development of the local government and efficient use of resources. Such balancing of interests does not mean that the Cabinet or *the Saeima* as the bodies responsible for making the final decision have to ensure immediate improvement of the situation in each existing local government as a result of the reform. A decision made for the benefit of public interests may not coincide with the individual interests of each specific local government. Redistribution of resources for their better use and cooperation for a more efficient provision of services in a wider territory almost always leads to the worsening of the situation of a specific party of the unified model in the short term.

The necessity of the reform was also emphasised in the study ‘Kas nosaka pašvaldību budžeta izdevumu atšķirības?’ (‘What determines the differences in local government budget expenses?’) conducted by the Bank of Latvia in 2019 (hereinafter – the Bank of Latvia 2019 study) that observed that the provision of services delegated to local governments needs to be concentrated in larger regions, taking into account the decrease in population in Latvia. The aims of merging

smaller local governments into larger ones are specified in the Cabinet Information Report of 14 May 2019 on the model of administrative-territorial division proposed for public discussion (hereinafter – the Cabinet Information Report of 14 May 2019). In the opinion of the Cabinet, the contested provisions do not affect the subsidiarity principle because they involve the transfer of functions to local governments of the same, i.e. regional, level.

At the court hearing, the representative of the Cabinet Artūrs Toms Plešs noted that it was more reasonable to hold consultations with regard to a fully prepared specific model of administrative-territorial division. The scope of information available in the course of preparing the reform was sufficient to enable the Cabinet to make a decision. This information was publicly available, as well as the opinions of the local governments. When making decisions with regard to the reform that would have an effect on the further development and future of Latvia, the Cabinet was looking for a way to achieve the best result for all people in Latvia that would ensure balanced development in the long term.

7. In the opinion of **the joined party – the Ministry of Justice –** the contested provisions comply with Article 1 and Article 101 of the Constitution and Articles 4(3) and (6) and Article 5 of the Charter.

When taking decisions in connection with the reform, *the Saeima* as the legislature enjoys considerable discretionary powers but it has to take account of public interests and legislation. In the opinion of the Ministry of Justice, when taking decisions on making Skulte Municipality part of the Saulkrasti Region and making the existing Ikšķile Region part of the Ogre Region, *the Saeima* assessed the needs of local residents, future development prospects and practicability of joining the territories. The Constitutional Court can control the legitimacy of the measures taken, insofar as they are evidently inappropriate for the achievement of the aims of the reform, but it cannot verify if these measures contain the best and the most efficient solution. The Ministry of Justice notes that the opinion of the Applicants was heard on numerous occasions in the course of preparing the reform,

wherefore the consultation can be deemed to have taken place in accordance with the Charter.

At the court hearing, the representatives of the Ministry of Justice Laila Medina and Iveta Brīnuma noted that the contested provisions do not directly affect the principle of subsidiarity because they focus on establishing the territory of the local governments and changing the boundaries rather than redistribution of local government functions or specific tasks entrusted to the local authorities. The aim of the consultation is to promote a dialogue, but disregarding an opinion in this process is normal practice. *The Saeima* has to make decisions based on assurance as to the most appropriate legal regulation with regard to the administrative-territorial division.

What is more, one of the fundamental principles of democracy is ensuring the continuation of the operation of democratic institutions and their uninterrupted work also in extraordinary circumstances. The Ministry of Justice states that no violations in the decision-making process at *the Saeima* took place in connection with the use of the *e-Saeima* platform.

8. In the opinion of **the joined party – the Ministry of Environmental Protection and Regional Development –** the contested provisions comply with Article 1 and Article 101 of the Constitution and Articles 4(3) and (6) and Article 5 of the Charter.

8.1. The Ministry notes that preparations for the consultation with the local councils on matters of the model of the administrative-territorial reform included the making of profiles – materials about each new local government – that were issued to the local councils; these profiles described the current situation in each existing local government and gave forecasts for the joined local government. The justification of joining the regions is inseparable from the common aims and justification of the reform provided in the Cabinet Information Report of 14 May 2019. These aims, along with the respective justification, were also mentioned in a number of earlier documents, including the Cabinet Information Report of 26 March 2013 ‘Assessment of the Administrative-Territorial Reform’,

the Guidelines for the development of the State administration policy in 2014–2020 approved by the Cabinet on 30 December 2014, the Cabinet Information Report of 3 May 2017 'On the administrative-territorial division of the State and establishing areas of cooperation between State administration institutions', the preparing of which involved consultations with local governments that were taken into account when drafting the proposal for the administrative-territorial reform in 2019. The necessity of changes to the structure of the administrative-territorial division of the country was also emphasised in the audit reports of the State Audit Office and the Bank of Latvia 2019 study. The European Commission and the Organisation for Economic Co-operation and Development also stressed the problems arising from the small size of local governments and decrease in population.

The size of a local government needs to be sufficient to ensure the local budget revenue necessary for independent exercise of its functions, which depend on various factors of regional economy. Only 14 of 119 existing local governments were able to provide jobs for at least a half of their population. Estimates indicate that population decreases most in local government territories with the lowest job opportunities. By contrast, following the reform, job opportunities for at least 40 per cent of the population will be available in 30 out of 42 local governments.

In connection with making Skulte Municipality part of the Saulkrasti Region, the Ministry notes that the Limbaži Regional Council agreed with the initial model of the administrative-territorial reform which saw Skulte Municipality remaining part of the Limbaži Region. However, the connection of Saulkrasti as an administrative centre with Skulte Municipality is compatible in a number of aspects. With regard to merging the Ikšķile Region with the Ogre, Ķegums and Lielvārde Regions, the Ministry notes that numerous circumstances revealed in the course of preparing the reform facilitated establishing precisely this form of the administrative territory.

8.2. Making reference in the Explanatory Report to the Charter, the Ministry notes that consultations with local governments must be based on mutual respect, honesty and openness in expressing and hearing various opinions.

However, the Charter does not prohibit preparing an initial model of the reform and holding consultation on a specific proposal.

The consultation procedure is not determined in a separate document and is held in accordance with requirements of the Charter, as well as the interpretation given in the documents accompanying it and judgments of the Constitutional Court. No official minutes of the consultations were kept, but the Ministry staff kept unofficial records that were later used to assess various opinions expressed and to make decisions on amending the initially proposed model of the administrative-territorial division. What is more, the consultation process is to be viewed in a wider context rather than separate meetings; namely, it can also take the form of official correspondence, meetings with local residents and other forms of cooperation. The local councils also had the opportunity to adopt decisions to express their attitude to the planned reform and to send letters to the responsible government bodies. Local residents also had an opportunity to send to the Ministry their proposals and objections with regard to the expected reform and to receive information by phone. The Ministry made all reform-related information publicly available on its website.

The Ministry must give a timely notice to the local council about a draft reform project submitted for discussion, so that the council has time, if necessary, to clarify the opinion of its residents and take a decision accordingly. In the opinion of the Ministry, the obligation to clarify the opinion of the respective local government can be deemed fulfilled in full in cases when consultations were held with members of the local council before the final decision was made. Consultations with the Ikšķile and Limbaži Regional Councils were held on 18 and 25 July 2019 respectively. Invitations to the consultations were sent out in a timely manner. The Ministry considered the proposals and objections received.

8.3. At the court hearing, the representatives of the Ministry Ilze Oša, Raivis Bremšmits and Diāna Orlovska noted that the reform in question is a continuation of the administrative-territorial reform implemented in 2008–2009 and preserves the aims set at the time, namely, ensuring that local governments are capable of exercising their functions in an efficient and optimum

manner and identifying an appropriate model that would prevent previous fragmentation of local governments and thus reduce inefficient use of resources. Increasing the efficiency of providing the services also helps reduce overall expenses of the local governments.

The representatives of the Ministry noted that in specific cases the planned administrative-territorial division was amended following consultations with the local governments. However, the number of such cases was low because, upon consideration of the proposals, they were mostly found non-compatible with the aims of the reform.

9. The joined party – the State Audit Office – notes that it checks the management of finances and property at government, local government and other bodies specified by the law, but it only assesses the legitimacy and legal regulation under specific activities as part of its audits. The State Audit Office assessed the matter of the amount of funds required for the fulfilment of local government functions in the course of numerous audits.

Findings of the audits indicate that keeping organised accounting is not common practice in local governments, which is why the possibilities of objective assessment of the impact of changes to the administrative-territorial division of the country on the ability of the local governments to ensure financing for exercising their functions are limited. The cost of provision of local government services, for the large part, is not determined on the basis of analysis of the process of service provision and resources used in this process. The cost of services provided by local governments is generally attributed to a functional category comprising a vast and non-specific scope of tasks, which in practice does not allow getting a clear idea of the amount of finance required to fulfil local government functions. Furthermore, a large number of independent functions of a local government and the procedure of exercising them are regulated by legislation in detail and local governments enjoy considerable discretionary powers in taking decisions on the most appropriate way of exercising their independent functions.

At the court hearing, the representative of the State Audit Office Edgars Korčagins noted that it is impossible to give an objective judgment on the impact of the reform on local governments' expenses because the cost of exercising each specific local government function is not known. In the course of its audits, the State Audit Office could not gain assurance that provision of services in smaller local government regions is always more expensive. However, the fact that various types of local government services and the cost of performed functions are not clearly separated in accounting records is not an indication of good governance.

The State Audit Office considered matters related to the reform in the Audit Report 'On the 2019 Annual Statement of the Ministry of Environmental Protection and Regional Development' and revealed specific irregularities in the use of funds in the process of preparing the reform. The State Audit Office did not assess a government report or any other policy planning document that considered functions of local governments or their services in the context of the reform.

10. The joined party – **the Bank of Latvia** – explains that budget expenses of local governments make a significant portion of the overall consolidated national budget expenses in Latvia, which therefore affects the macroeconomic situation not only in the administrative territories, but in the country in general.

The former administrative-territorial division of Latvia was uneven in terms of population and economic activity. It is expected that population will continue to decrease in the coming decades. Unfavourable demographic changes can not only cause difficulties in forming local government budgets, but also make it complicated to find staff to perform local government functions. In the long term, this situation may have a negative impact on the quality and accessibility of local government services and the ability of local governments to promote development of their territories.

The Bank of Latvia 2019 study revealed, among other things, that Latvia has a negative correlation between the cost of maintaining a regional local government budget per capita and the population size of the respective region; namely, the smaller the local government region, the higher the cost of exercising

its functions. In the long term, it may restrict the ability of local governments to invest in the development of their territories. The study also revealed that changes to the administrative-territorial division, i.e. establishing larger regions, is one of the solutions to reduce the negative impact of demographic trends on local government finances. Other factors should also be taken into account when establishing the new administrative-territorial division, such as the availability of infrastructure and other characteristics that can affect the availability of services in the new regions, and matters related to ensuring the principle of good governance need to be addressed too.

The Bank of Latvia draws attention of the Constitutional Court to the fact that arguments of the Applicants mainly refer to the legislative process in which the contested provisions were adopted rather than the economic grounds for reforming the regions. The Cabinet and *the Saeima* have an obligation to verify and, if necessary, to improve the institutional system of State governance.

At the court hearing, the representatives of the Bank of Latvia Edvards Kušners and Kārlis Vilerts noted that discussions about the reform in 2019 mainly focused on establishing larger regions in terms of population. Therefore, in its study the Bank of Latvia tried to answer the question whether the assumption that establishing larger local government regions would bring any economic benefits is justified. Economic theory does not give definitive answers. On the one hand, there are numerous advantages to organising governance in small territorial units, e.g. local authorities can understand the needs of people better and adjust their services accordingly. On the other hand, provision of services in excessively small local government regions may not be economically feasible because the cost of constant provision of the services may be considerable. Assessing the administrative-territorial division from an economic point of view, it is important to find a balance between local democracy and economic viability.

11. The joined party – the Latvian Association of Local Governments – agrees with the arguments of the Applicants.

Recommendations of Latvian and foreign experts were disregarded in the implementation of the reform. The extraordinary meeting of the Association of Local Governments Council of 16 September 2019 decided to send information to the Congress with regard to violations of the local governments' rights in the course of the reform. In response to the information received, experts of the Congress Supervisory Committee on 4 December 2019 made a fact-check visit to Latvia and published a report on 11 February 2020 recommending that the reform be postponed to hold efficient consultations with local residents and the local governments. The Congress approved the above report on 7 November 2020.

Likewise, the reform implementation process disregarded the Latvian Academy of Sciences Humanities and Social Sciences Department expert board report of 4 November 2019, which recommended that implementing the reform be postponed until a comprehensive analysis has been prepared and research-based proposals on the impact of the reform on the development of society, the quality of people's life and changes in business environment, as well as the connection of the administrative-territorial reform with other reforms and other aspects have been made clear to the public.

The reform is a long-term instrument of the national economy development. Its application should be based on considerate and strategic assessment of the reform implemented so far, as well as a comprehensive and detailed estimate and forecast of expected benefits. The reform does not only concern the change of the boundaries of territorial units or reducing the burden on administration. Implementation of the existing model of the reform takes place under the auspices of a single ministry, without connection with other sectors. There is no single in-depth understanding of significant everyday aspects that will become important following completion of the reform. The Ministry has not made a detailed analysis of the benefits and disadvantages of the reform across different groups of administrative territories so far. Such an assessment should be available and discussed publicly before new aims of the reform can be formulated.

It is the opinion of the Association of Local Governments that the very reason for establishing a special committee for the consideration of the Draft Law

was to avoid significant and meaningful discussions in the course of the consideration. Placing the Parliamentary Secretary of the Ministry at the head of the Committee cannot be considered a democratic step. Furthermore, almost a tenth of the Members of *the Saeima* – MPs who do not belong to any parliamentary group, were not represented at the Committee.

The local governments sent countless letters to various authorities and officers, but more often than not there was no response. The Ministry paid lip service to consulting the local governments before submitting the Draft Project to *the Saeima* and was unable to answer the most significant questions.

At the court hearing, the representatives of the Association of Local Governments Māris Pūķis and Kristīne Kinča noted that the principle of subsidiarity applies to both concentration and de-concentration, as well as both centralisation and decentralisation. The centralisation aspect concerns relations between the levels of power, whereas the concentration aspect concerns changes of same scale levels.

Proper consultation involves not just hearing the local governments' opinion, but also taking heed of it. It is a process of bilateral talks where the parties' opinions are argued and an agreement is reached. There was no serious consultation of this kind at the stage of preparing the reform that would address concerns and issues raised by the local governments and their residents.

12. The joined party – Raita Karnīte, *Dr. oec.*, Full Member of the Latvian Academy of Sciences – noted at the court hearing that the administrative territorial reform should be considered comprehensively, from the perspective of both national and social development. It is necessary to take account of improvement in the quality of local government services, the internal balance of the local government territories, financial benefits and expenses resulting from the reform in the first year following the reform, as well as during the further four years after it.

In the opinion of Raita Karnīte, proponents of the reform did not pay attention to the socio-economic consequences of centralisation and concentration

of funds and infrastructure, such as the strengthening of national and local community identity, the risk of depopulation in marginal territories and a balanced spread of population across the territory, accessibility of education and healthcare, maintaining the democratic process.

Government authorities have a right to take decisions with regard to issues of national importance, and they may disregard individual wishes and experience. However, this right needs to be exercised responsibly and in the interests of the people, because the State is composed of its people. The reform does not consider improvement of the quality of people's life.

13. In the opinion of **the joined party – Staņislavs Keišs, *Dr. oec.*, Professor of EKA University of Applied Sciences** – there were numerous irregularities and procedural violations when adopting the contested provisions. Opinions of Latvian and international experts were ignored when preparing the reform.

Furthermore, it is not clear what is the position of the Ministry with regard to the proposed criteria of establishing regions and the way of addressing the alleged inequality between local governments. Historically, the necessity for the reform results from the necessity to establish a competitive administrative-territorial division of the country that would correspond to the EU scale. Staņislavs Keišs believes that the reform of the State governance and administrative-territorial division needs to take place simultaneously with the regional reform. By contrast, it has been decided in Latvia to reform local governments first, and then establish regions and reform the State governance.

14. The joined party –Andris Miglavs, *Dr. oec.* – noted at the court hearing that the administrative-territorial division cannot be considered without the context of territorial administration as a whole and overall socio-economic processes in the country. Organising the management of territorial development is one of the decisive factors for the management of development of the entire society, as well as an instrument of the development policy. Aims of the reform are

not discussed in public, whereas the defined aim of the reform cannot be achieved with the proposed instrument, i.e. changing the boundaries of administrative territories. Namely, it is impossible to establish administrative territories capable of economic development across Latvia solely by means of changing the boundaries. Reducing the number of members of local councils by more than two and a half times indicates that involvement of the Latvian people in the processes of administration of local governments and territories will be significantly reduced.

The local government profiles do not assess the necessary changes, common interests and values, as well as a common development direction determined by the local communities on their basis. What is more, the local government profiles do not allow making economic conclusions.

15. The joined party – Iveta Reinholde, *Dr. sc. pol.,* Professor of the University of Latvia Social Sciences Faculty – notes that only limited consultations were held with local governments and local communities in the course of preparing and discussing the contested provisions, thus limiting the ability of the local governments to propose alternative scenarios of determining the boundaries and carrying out the reform.

Article 4(3) of the Charter allows establishing larger local government regions, but only on the basis of demonstrable economy, efficiency and feasibility considerations of services provided by such local governments. The involvement of residents in the decision-making process promotes transparency of such decisions and feasibility of providing the services, because local governments understand the needs of local residents best and are able to respond to them in a timely manner.

The Charter does not regulate the consultation process in detail. However, for the consultation process to be meaningful, firstly, the local governments and the association that represents them need to have access to all information with regard to the government's intentions or planned changes in the policy as early as the initial stage of preparing the decision; secondly, the local governments must be able to express their opinion before a legally binding decision is made, and they

must be informed of this possibility in a timely manner; thirdly, the local governments must be allowed sufficient time and possibilities to prepare their opinion on the respective issue and their proposals that they can then use in the consultation process. The administrative-territorial reform needs to be based on careful analysis, institutional dialogue and consultation process, as well as a detailed plan; on top of that, the process and the results must be assessed on a permanent basis.

Exact conditions in respect of the size of a local government's territory are not specified in any document or academic literature. This matter is at the discretion of the national government. However, changes in the boundaries of administrative territories must take account of the local traditions and history, and must, as far as possible, enable the residents to identify themselves with the earlier administrative structure. With regard to willingness to contribute to implementing the reform, it is necessary to support bottom-up initiatives, as they ensure consistency and sustainability of the reforms.

At the court hearing, Iveta Reinholde noted that, in accordance with the principle of good governance, it is advisable that records should be kept of the consultation process in one form or another. This constitutes a policy based on evidence. A detailed plan of the reform helps, among other things, to make an estimate of funds required for the reform. At the court hearing, Iveta Reinholde admitted that planning at a greater detail would be desirable in the case of Latvia.

16. The joined party – Jānis Vanags, *Dr. oec.,* Professor of Riga Technical University – noted at the court hearing that the diminishing population in local government regions has a significant negative effect, e.g. in terms of attracting investments. However, the existing studies do not provide an answer as to whether the reform will stop or at least limit the population decrease.

Some aims of the reform are just idealistic declarations, e.g. in respect of establishing a system of equal and sustainable local governments. Mutual differences between local governments are unavoidable because each local government has its own natural and acquired competitive advantages. What is

more, subjective factors also play a significant role, e.g. who heads the respective local government. The aim of creating an environment that would be attractive for investment and facilitate creating productive jobs cannot be considered as achievable either, because population decrease reduces also the competitiveness of the investment environment. This problem cannot be resolved by a reform. Therefore, the statement that the reform can facilitate attracting investments is incorrect.

State governance is subject to the will of the people, the interests of the people and the needs of the people, and every reform must be focused on the future. The process of the reform needs to clearly reveal the expected social advantages, economic advantages and administrative advantages, as well as the way it will facilitate meeting the people's needs. The local governments and local residents did not receive comprehensive information as to how the reform will take place and the form of the State governance after the reform. Jānis Vanags suggests that local governments in Latvia as a small country should also be smaller, so that the people may preserve and grow a patriotic attitude towards their region.

17. The joined party – Jānis Pleps, *Dr. iur.*, Lecturer of the University of Latvia Faculty of Law – notes that interpretation of the Constitution in the legal system of Latvia needs to be dynamic, taking into account, among other things, changes in the public life and opportunities provided by available technologies and scientific achievements, wherefore remote work of *the Saeima* and its committees is constitutionally permissible.

The Saeima completed its deliberations on the Law on Administrative Territories and passed it during the emergency situation declared in Latvia in order to restrict the spread of the Covid-19 infection. Remote meetings enabled *the Saeima* to consider and adopt the Law on Administrative Territories during the emergency situation. Pursuant to Article 21 of the Constitution, the progress of specific draft laws in the law-making process is at the discretion of *the Saeima* and it makes the respective decision based on the principle of parliamentary autonomy.

An interpretation hindering or paralysing the work of *the Saeima* would contradict the aim of the Constitution, weakening the parliament in an emergency situation and weakening the State as a whole. The approach of *the Saeima* to its work, i.e. ensuring the continuity of the work of *the Saeima* and its committees is in line with the fundamental principles of the operation of the State constitutional bodies defined by the heads of these bodies. In this situation, however, Article 15 should be interpreted with caution, namely, remote work of *the Saeima* is only permissible as an exception rather than normal practice.

At the court hearing, Jānis Pleps emphasised that the legislature has vast discretionary freedom in matters of reform within the framework of the general law principle of a rule-of-law state, including the principle that prohibits arbitrariness.

The reform does not and may not aim to establish a model that would be more convenient for the central government or local government authorities, existing or emerging local governments. The interests of the people is the only possible point of reference, and the respective aims are very clearly set out in the Preamble to the Constitution. Each and every political structure that enables a democratic participation of the citizens must ensure high quality of this democratic participation. Democracy may not be restricted for the sake of economic benefit alone.

18. In the opinion of **the joined party** – **Edgars Pastars, *Mg. iur.*** – the Law on Administrative Territories needed to set out criteria for establishing administrative territories, and currently it is impossible to make an objective assessment of whether the Annex to the Law on Administrative Territories was duly prepared and whether interests of the local governments are adequately balanced. Therefore, there are indications of violation of the principle of good legislation and the principle prohibiting arbitrariness.

Articles 1 and 101 of the Constitution do not protect the local governments' willingness 'to keep things as they are'. The rights of local governments may be restricted and the legislature has to consider all interests and achieve a balance

accordingly, in line with the principle of proportionality. However, the discretionary powers of the legislature are not absolute, and establishing administrative boundaries in contradiction to the local governments' opinion is an infringement of Articles 1 and 101 of the Constitution.

The responsible government authorities provided justification for the reform. The Annotation to the Draft Law gives a clear idea of the justified aims the legislature wanted to achieve. Even if a local government could prove that the new administrative-territorial division causes certain inconvenience and that another solution would be more efficient, it would not automatically change the constitutionality of the decision of the legislature. The State may take the decision if, before that, interests of various local governments and needs of the State in general have been balanced in accordance with common and clear criteria, in this way outweighing the possible restriction.

In the opinion of Edgars Pastars, criteria for establishing administrative territories set out in the law would enable the legislature to balance the interests of various local governments and to ensure equal attitude and legal certainty. The content of the law is not static, administrative territories can also be changed after the reform, as proved by the previous reform. Even though, in theory, *the Saeima* may take a reasonable decision also without introducing criteria in the law, such criteria would guarantee equal approach and clear justification for restricting the interests of specific local governments and the reasons for this.

At the court hearing, Edgars Pastars noted that proportional representation is an important principle for setting up *the Saeima* committees. A practice whereby a committee is headed by the parliamentary secretary of a ministry is not an indication of good legislative process, even though combining offices in such a way is not formally prohibited.

The decision to hold *the Saeima* sittings on the *e-Saeima* platform was taken by the Presidium of *the Saeima*. However, this aspect is not regulated by the Rules of Procedure of *the Saeima*, and the Presidium of *the Saeima* should have taken this decision jointly with the Council of Parliamentary Groups or at least in consultation with the Council. It should be admitted, however, that holding *the*

Saeima meetings on the *e-Saeima* platform did not change the procedure whereby matters are examined by *the Saeima*.

Conclusions

19. The Case under examination is to assess compliance of legal provisions adopted for the implementation of the administrative-territorial reform with provisions of superior legal force. Administrative-territorial division is an important aspect of operation of any successful state, which takes shape over a specific period of time under the influence of various circumstances. The territory of Latvia has formed and changed over a long time in history, and its administrative-territorial division has been changed in the course of numerous administrative-territorial reforms.

Characteristically for a unitary state, the administrative-territorial units in Latvia, their status, powers and structure are determined by the central government. The Constitutional Court has acknowledged that the obligation of the legislature as a democratically legitimised authority is taking independent decisions with regard to all important aspects of national and public life. The administrative-territorial division of the Republic of Latvia is a fundamental matter that plays an important role in the quality of governance in the Latvian State and meeting the needs of its people, and brings about important changes in the organisation of the State administration and public life (*see paragraphs 16, 16.1, 16.2 and 16.3 of the Constitutional Court Decision of 20 January 2009 terminating court proceedings in Case No 2008-08-0306*).

When implementing the administrative-territorial reform, *the Saeima* and the Cabinet must consider the general benefit of the society. The reform affects the entire territory of the country, wherefore the responsible decision-making authority determines the main interests at the core of the reform, as well as the criteria for its implementation. Matters the resolution of which is not subject to sufficiently strict legal categories and standards and where conclusions depend mostly on the political will must be resolved by democratically legitimised political government

bodies, primarily the legislature (*cf. paragraphs 11 and 12 of the Constitutional Court Decision of 20 January 2009 terminating court proceedings in Case No 2008-08-0306*).

The general benefit of the society is a general clause, and the decision-maker has considerable freedom of assessment in the concretisation of its content. The general benefit of the society, among other aspects, can be concretised as increase of the administration efficiency in local governments, improvement of the quality of services provided by local governments, ensuring equal quality of the environment and life and the levelling of differences, the strengthening of the people's feeling of belonging and cultural identity, and implementation of the aims of planned territorial development.

However, the legislature may not exercise its freedom of assessment and discretionary powers arbitrarily, i.e. in contradiction to the general principles of law and other provision of the Constitution (*cf. paragraph 15.1 of the Constitutional Court Judgment of 18 April 2019 in Case No 2018-16-03*). Legislation adopted by the legislature must be based on rational considerations and aimed at sustainable development of the State even in areas where it has vast freedom of assessment. In taking decisions on the administrative-territorial division of the country and making the most politically viable decision, the legislature has to take into account considerations of various nature and to comprehensively align different interests. The legislature, among other aspects, has to take into account both the need to uphold the local democracy, observing the people's rights to democratic participation, and other considerations related to the socio-economic development of the country as a whole and the demographic situation in it.

The Constitutional Court's control of the legislature's freedom of assessment with regard to decisions in connection with establishing the administrative-territorial division is restricted by the principle of separation of powers. The Court does not verify if the respective assessment contains the best and the most politically and economically efficient solution (*see paragraph 7.2 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*).

However, with regard to evaluating decisions in adopting which the legislature enjoys a vast freedom of assessment, the Constitutional Court has full powers to verify if the respective legislation complies with the general principles of law and other legal provisions.

Therefore, in examining whether the legal provisions related to the administrative-territorial reform comply with the provisions of superior legal force, the Constitutional Court evaluates the legal aspects of the said reform.

20. It is the opinion of the Applicants that the contested provisions do not comply with the subsidiarity principle enshrined in Article 4(3) of the Charter. At the court hearing, the representative of the Ikšķile Regional Council expressed an opinion that the reform would result in the local government's decision-making becoming more remote from its residents and, on top of that, it would limit the ability of residents of the Ikšķile Region to elect to the Ogre Regional Council representatives that are best familiar with their interests and are capable of protecting them best (*see vol. 16, pp. 118 and 141 of the transcript of the court hearing of 13 January 2021).* A number of the joined parties to the case, e.g. the Association of Local Governments and Iveta Reinholde, emphasised possible non-compliance of the contested provisions with the subsidiarity principle (*see vol. 18, pp. 31-32 and p. 81 of the transcript of the court hearing of 21 January 2021*).

By contrast, in the opinion of *the Saeima*, the contested provisions do not affect the subsidiarity principle because these provisions do not re-allocate functions between local governments and state governance bodies at other levels. A number of the joined parties, among them the Cabinet and the Ministry of Justice, also stated that the contested provisions do not affect the subsidiarity principle (*see vol. 17, pp. 119 and vol. 19, p. 14 of the transcript of the court hearing of 20 and 26 January 2021*).

Hence, the Constitutional Court needs to establish if the contested provisions affect the subsidiarity principle. If the contested provisions do not affect

the subsidiarity principle, the court proceedings under this part of the claim are to be terminated.

20.1. Pursuant to Article 4(3) of the Charter, 'Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy'.

This provision comprises the subsidiarity principle, which contains the following requirement: if for reasons of its scope and nature a responsibility does not need to be exercised in a wider territory, and considerations of efficiency and economy do not require it, the responsibility should generally be allocated to the authorities at the local level. Subsidiarity is the main principle to be taken into consideration in defining the powers and functions to be allocated to local governments (*see paragraphs 61 and 62 of the comment to the Explanatory Report to the Charter approved by the European Congress of Local and Regional Authorities Resolution 460 (2020) of 7 December 2020*).

Also the Constitutional Court has acknowledged that, according to the principle of democracy and the principle of self-government, the State governance at the functional level is to be organised on the basis of subsidiarity, i.e. the administration of local needs and interests is to be allocated as close as possible to the people, a self-government established by them (*see paragraph 13.2 of the Constitutional Court Judgment of 15 May 2020 in Case No 2019-17-05*). The Constitutional Court has also concluded that the consequences of the administrative-territorial reform may also include re-allocation of responsibilities between the central government and local authorities. The subsidiarity principle is connected, *inter alia*, with the essence of the self-government principle. However, the self-government principle in itself does not guarantee a specific model of the subsidiarity principle that local governments see as preferable (*cf. paragraphs 13.1 and 14.2 of the Constitutional Court Decision of 20 January 2009 terminating court proceedings in Case No 2008-08-0306*).

20.2. The Law on Administrative Territories establishes a new administrative-territorial division in the Republic of Latvia whereby there are

42 administrative territories in Latvia instead of 119 administrative territories previously. The Law does not contain provisions establishing multi-level local governments. The Law on Local Governments, which regulates the operation of local governments, sets out autonomous functions of local governments and establishes the procedure for implementing the delegated functions and free initiatives, will also apply to the local governments established as a result of the reform. Therefore, even though the new local governments will mostly be larger, functions that are important for the residents will continue to be exercised by local governments at the same level.

It follows that the contested provisions do not provide for reallocation of functions between a local government and the central government and, consequently, does not affect the subsidiarity principle. Therefore, the Case under examination is not concerned with evaluating compliance of the contested provisions with Article 4(3) of the Charter. Pursuing the court proceedings under this part of the claim is not possible. Arguments with regard to restricting the representation of residents in the united regions are to be examined as a possible restriction of the right to democratic participation rather than in the context of the subsidiarity principle.

It follows that the court proceedings with regard to compliance of the contested provisions with Article 4(3) of the Charter are to be terminated pursuant to Section 29(1)(6) of the Constitutional Court Law.

21. The Applicants have requested that the Constitutional Court evaluate the compliance of the contested provisions with Article 1 and Article 101 of the Constitution and Article 4(6) and Article 5 of the Charter. The Limbaži Regional Council states that, pursuant to sub-paragraph 35.4 of the Annex to the Law on Administrative Territories, Skulte Municipality will be separated from the administrative territory of the former Limbaži Region and will be made part of the new Saulkrasti Region, in this way violating the principles of self-government, good governance and proportionality. In the opinion of the Ikšķile Regional Council, sub-paragraphs 28.2 and 28.19 of Annex to the Law on Administrative

Territories making the town of Ikšķile and Tīnūži Municipality part of the administrative territory of the Ogre Region are non-compliant with, *inter alia*, the principles of self-government, the rule of law, good legislation and proportionality. At the court hearing, the representatives of the Applicants gave arguments also with regard to infringements of local democracy and the process of democratic participation that would result from adopting the contested provisions.

21.1. Pursuant to Article 101 of the Constitution, local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Similarly, the same provision of the Constitution entitles every citizen of Latvia, as provided for by law, to participate in the work of local government. These fundamental rights of citizens are a manifestation of a democratic State governed by the rule of law and are its inseparable part. Article 101 of the Constitution not only enshrines the right of the citizens to elect local governments and participate in their work, but also establish an institutional requirement for the existence of local governments. The institutional existence of local governments is part of the structural principles of the Republic of Latvia as a democratic rule-of-law State.

The Constitutional Court has concretised the principle of self-government within the context of application of Articles 1 and 101 of the Constitution. The principle of self-government comprises the existence of local self-government and democratic legitimisation (*cf. paragraph 13.1 of the Constitutional Court Decision of 20 March 2009 terminating court proceedings in Case No 2008-08-0306*).

In functional terms, a local government is a territorial self-government, i.e. it exercises its functions within a specific territory. The boundaries of administrative territories may be determined by the legislature or the Cabinet based on the mandate issued by the legislature. The Constitutional Court has concluded that the principle of self-government as such is not affected if smaller local governments are merged into a larger region (*see paragraph 13.1 of the Constitutional Court Decision of 20 January 2009 terminating court proceedings in Case No 2008-08-0306*). If follows that the principle of self-government does not guarantee the existence of a specific local government.

The Constitutional Court has concluded that, in accordance with the principle of the supremacy of law, the State is associated with law and can only act within the limits of legal provisions (*see paragraph 13.1 of the Constitutional Court Judgment of 15 May 2020 in Case No 2019-17-05*). Furthermore, the law and legislation are binding on any government authority, including the legislature itself (*see paragraph 16 of the Constitutional Court Judgment of 3 February 2012 in Case No 2011-11-01*).

The principle of the State governed by the rule of law also gives rise to the principle of good legislation. The branches of power in a democratic rule-of-law state, including the legislature, must seek to strengthen the trust of any individual in the State and law, as well as the understanding of the democratic process. Observing the principle of good legislation facilitates achievement of this aim (*see paragraph 18.1 of the Constitutional Court Judgment of 6 March 2019 in Case No 2018-11-01*).

The Constitutional Court has acknowledged that each decision that concerns a matter significant for the life of the State and society is subject to specific constitutional requirements that ensure that the decisions are taken in accordance with the principles of a democratic rule-of-law state (*see paragraph 25.2 of the Constitutional Court Judgment of 19 October 2017 in Case No 2016-14-01*). In accordance with the principles of self-government, the rule of law and good legislation, when preparing the administrative-territorial reform, government authorities are obligated to comply with a specific procedure set out in legislation (*cf. paragraph 13.1 of the Constitutional Court Decision of 20 January 2009 terminating court proceedings in Case No 2008-08-0306*).

Furthermore, in their work all government authorities in a democratic rule-of-law state, when exercising the State power, must observe the principle of proportionality (*see paragraph 14.3 of the Constitutional Court Judgment of 14 December 2018 in Case No 2018-09-0103*).

It follows that Articles 1 and 101 of the Constitution do not prevent the legislature to implement an administrative-territorial reform in the public interests,

provided that in doing so it complies with legislation, i.e. the legislature does not act arbitrarily.

21.2. Pursuant to Article 4(6) of the Charter, local governments shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly. Pursuant to Article 5 of the Charter, 'Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute'.

The Preamble to the Charter acknowledges that local authorities are one of the main foundations of any democratic regime, whereas the right of citizens to participate in the conduct of public affairs is one of the democratic principles shared by all member States of the Council of Europe. The Charter seeks to achieve that the States, as far as possible, make responsibilities enshrined in it part of their constitutional systems and in this way ensure that compliance with the respective regulations is enforced by means of their constitutional control mechanisms (*see paragraph 10 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*).

Furthermore, the right of local governments to be heard at a higher level of power or consultation with local governments is a fundamental principle of legal and democratic practice in Europe enshrined in numerous Articles of the Charter. Timely and appropriate consultation contributes to strengthening democracy and good governance and to development and implementation of sound policy and legislation (*see paragraph 1 of the Council of Europe Congress of Local and Regional Authorities Resolution 437 (2018) of 8 November 2018 'The consultation of local authorities by higher levels of government'*).

The Constitutional Court has concluded: Article 5 of the Charter applies both to requirements with regard to consultation set out in Article 4(6) of the Charter and to an additional requirement to consult directly the respective local government in the case of amending the borderlines of its administrative territory (*see paragraph 13.1 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*). The Constitutional Court has acknowledged that the notion

of '*local communities*' in the Charter written in English, which was translated into Latvian as *'vietējā vara'* (*'local power'*) denotes *'local communities'* and refers to residents of the respective administrative territory (*cf. paragraph 16.3 of the Constitutional Court Judgment of 15 May 2020 in Case No 2019-17-05*).

21.3. The Constitutional Court has acknowledged the following: if compliance of a legal instrument with numerous provisions of superior legal force is contested, the Court, taking account of the nature of the case, must determine the most efficient approach to assessing this compliance (*e.g. see paragraph 13 of the Constitutional Court Judgment of 15 May 2020 in Case No 2019-17-05*). The principles of self-government, the rule of law and good legislation enshrined in Articles 1 and 101 of the Constitution and Article 4(6) and Article 5 of the Charter, when interpreted in reference to each other, establish requirements that the responsible government authorities must observe when preparing the administrative-territorial reform, passing legislation in connection with it and implementing the reform. The above requirements refer to both procedural aspects of determining the legal regulation of administrative-territorial division and its substantive aspects, i.e. the need to assess if, in adopting this regulation, the legislature did not act arbitrarily.

Therefore, to evaluate the compliance of the contested provisions with legal provisions of superior legal force, the Constitutional Court has to find out, firstly, whether the contested provisions were drafted and adopted in a proper procedure and, secondly, whether the legislator did not act arbitrarily.

The Constitutional Court will evaluate the compliance of the contested provisions with Article 1 and Article 101 of the Constitution and Article 4(6) and Article 5 of the Charter in reference to one another.

22. The Limbaži Regional Council notes that it supported the administrative-territorial division initially proposed by the Ministry and consistently argued that the integrity of the existing administrative territory of the Limbaži Region was to be preserved as a result of the reform. No appropriate consultation was held with local residents and the local council about the solution

involving establishment of the Saulkrasti Region with the Skulte Region as part of it.

The Ikšķile Regional Council states that consultation with the local government did not take place in essence. In addition, numerous violations took place in the course of discussing and adopting the contested provisions in *the Saeima*.

In evaluating the procedure in which the contested provisions were drafted and adopted, the Constitutional Court will review, firstly, whether consultation with the respective local authorities during the period of drafting and consideration of those provisions was carried out in accordance with the relevant regulations and, secondly, whether the contested provisions were considered and adopted by *the Saeima* in accordance with the relevant regulations.

23. The Ikšķile Regional Council emphasised numerous possible violations during the consultation process. Among them, the fact that the consultation with the Council members took place after the Ministry had prepared its proposal for the administrative-territorial division and the fact that the process of consultation was not regulated and no minutes of the meetings were kept. The Limbaži Regional Council does not object to the process of consultation held by the Ministry but holds that the time allocated for discussion of making Skulte Municipality part of the administrative territory of the Saulkrasti Region was too short to consider consultation with the local council and local residents held appropriately.

To evaluate whether consultation with the respective local governments during the period of drafting and consideration of the contested provisions was carried out in accordance with the relevant regulations, the aim of the consultation process needs to be taken into account.

23.1. Having interpreted Article 5 of the Charter in reference to the first sentence of Article 101(2) of the Constitution, the Constitutional Court has concluded that consultation in the meaning of Article 5 of the Charter is primarily deemed consultation where the opinion of the directly elected local self-

government body, i.e. the Council, is heard. Consultation with the local government can take place in the course of the entire process leading up to adopting the respective legal instrument, and government authorities have vast discretionary freedom to determine the details of the consultation procedure, as long as this procedure is applied in principle, in order to appropriately take into consideration the interests of the local government (*see paragraphs 12.2 and 13.2 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*).

The Constitutional Court has concluded that the reform intending to change the boundaries of existing administrative territories is directly connected with the rights and legitimate interests of local residents of the respective administrative territory and exercising the autonomous functions of the local government. For that reason, Article 101 of the Constitution and Article 5 of the Charter include, *inter alia*, the powers of the local council to consult local residents of the respective administrative territory so that their opinion may be made known to government authorities in due course during the reform. Furthermore, the local council may seek the local residents' opinion at any stage of the reform, i.e. immediately upon receipt of information that the reform may affect its administrative territory (*cf. paragraph 16.3 of the Constitutional Court Judgment of 15 May 2020 in Case No 2019-17-05*).

It follows that, according to the principle of self-government, in the case of change in its administrative territory, any local government has the right to access a sufficiently detailed draft of the planned changes, to discuss it within a reasonable period of time, involving local residents of the territory in the discussions as far as possible; to adopt a respective local council decision based on the results of the discussion and to have assurance that the opinion expressed in the local government decision will be taken into account by government authorities when making the final decision. Arguments given in the council decision must be examined, but it does not mean that the final decision taken by the government authority will not differ. The local government does not have 'a right of veto' with regard to change in its boundaries, and the local government's support to such change is not a prerequisite for the responsible government authority to implement

the change, provided that the requirements of Article 5 of the Charter with regard to due consultation of the local community have been observed (*cf. paragraphs 8 and 13.4 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*).

23.2. The Explanatory Report to the Charter and other documents set out specific requirements for the consultation process. These documents are of advisory nature and they must be taken into account when interpreting the respective provisions of the Charter.

Recommendation Rec(2004)12 of the Committee of Ministers of the Council of Europe of 20 October 2004 emphasises the importance of the institutional dialogue and consultation process. The result of an administrative-territorial reform to a great extent depends of the ability to reach an agreement, which is why a direct or indirect discussion with local residents is important. If provisions of the national law do not require holding a referendum, other forms of consulting the residents may be used. In the case of change in the boundaries of administrative territories, it is necessary to involve the stakeholders already at the stage of preparing the reform, and the process must comply with the fundamental principles of the Charter, e.g. with regard to consulting local communities (*see paragraph b and paragraphs 11, 16 and 17 of Section II of the Preamble to Recommendation Rec(2004)12 of the Committee of Ministers of the Council of Europe to Member States of 20 October 2004 on the processes of reform of boundaries and/or structure of local and regional authorities*).

The Congress Resolution 437 (2018) of 8 November 2018 sets out guidelines and key fundamental principles for the consultation process, including the mandatory nature of the consultation process in cases when changes in boundaries of the local government territories are discussed. All parties of the process should show mutual respect, the consultation must be open and transparent, and the parties involved should be forthcoming in providing feedback. Local governments have the right to receive clear and detailed information on proposed policy documents and decisions, their motives and aims, both before and during the consultation. It is advisable to keep minutes of the consultation

(*see paragraphs 8, 13, 27 and 39 of the Council of Europe Congress of Local and Regional Authorities Resolution 437 (2018) of 8 November 2018 'The consultation of local authorities by higher levels of government*').

The Constitutional Court has concluded that the aim of consultation during the reform process is to clarify the opinion of local residents and the local council about possible solutions for administrative-territorial division, so that the responsible government authorities may be aware of this opinion and may consider it when making the final decision.

Therefore, to evaluate whether consultation with the respective local governments during the period of drafting and consideration of the contested provisions was carried out in accordance with the relevant regulations, it is necessary to establish the following: 1) whether the local council had a possibility to prepare its opinion, having also found out the opinion of the residents of the respective administrative territory, and to submit to the responsible government authorities its proposals and objections regarding the planned reform; 2) whether the time allowed for this was reasonable; 3) whether the local governments' proposals and objections were given consideration.

23.3. Finding out the opinion of local residents plays an important role in the consultation process. The Limbaži Local Council noted that in order to find out the local residents' opinion about dividing off Skulte Municipality from the administrative territory of the existing Limbaži Region it was necessary to hold a public discussion in accordance with the procedure set out in Section 61^1(2) of the Law on Local Governments. The Ikšķile Regional Council also argued that a public discussion would be the most appropriate form of finding out the local residents' opinion.

Pursuant to Section 61^1(1) of the Law on Local Governments, a public discussion on matters of autonomous powers of a local government for consultation purposes may be held based on the decision of the local council, on the initiative of local residents, the local council or its chairperson. Pursuant to part two of the Section, public discussion must be held, firstly, on matters of change in

boundaries of the local government's administrative territory and, secondly, on matters of the local government development programme and territorial planning.

The requirement for holding a public discussion in the case of change in boundaries of the local government's territory set out in Section 61^1(2)(1) is applicable only in situations when the change is proposed by the local council itself, which is then obligated to organise the public discussion. The above provision does not apply in the case of a national administrative-territorial reform when part of a local government's previous administrative territory is joined to the administrative territory of another local government. If the boundaries of a local government are changed on the initiative of the State, hearings and consultation are governed by the principle of self-government and the Charter.

Finding out the opinion of local residents at the stage of preparing the reform falls to the local government in order to make it known to government authorities. When it initiated preparing the reform, the Ministry did not establish a single way of consulting local residents. Therefore, the local council could choose a way on its own, including holding a public discussion on its own initiative, pursuant to Section 61^1(1).

23.4. When assessing the consultation process, it is necessary to take into account the fact that consultation is not restricted to hearing the local government's opinion in person during consultations held by the Ministry. The consultation process is to be assessed as a whole, over the course of preparing the reform and drafting and consideration of the respective draft law, taking into consideration both the local government's decisions and letters sent to various government authorities and officers, and the fact that the opinion of local residents and the local council was heard at various meetings, as well as participation of representatives of the local government in meetings of the Committee when proposals regarding the local government in question were considered.

23.4.1. On 29 March 2019, the Ikšķile Regional Council adopted the Decision on organising an opinion poll among local residents. It stated that the administrative territory of the Ikšķile Region is to be merged with other regions in the course of the reform, despite the fact that the local government prepares a

development-focused budget on a yearly basis, including financial investments in constructing and renovating infrastructure, and also pays contributions to the fund for equalisation of local governments' finances. Furthermore, in view of significant and consistent increase in local population, the local government constantly makes investments to improve the quality of life of local residents, exercises the full scope of the local government functions and provides high quality local government services. Therefore, the Ikšķile Regional Council holds that current and projected development of the region enables preserving the Ikšķile Region as a separate administrative territory in the future. The opinion poll among local residents took place between 9 and 11 May 2019, with 3 299 residents of the Ikšķile Region participating, 98.45 per cent of whom supported the proposal for preserving the Ikšķile Region as an independent administrative territory in the Republic of Latvia (*see vol. 3, pp. 100–102 and pp. 106–107 of materials in the Case*).

On 18 July 2019 in Ogre, the Ministry held consultation with members of regional councils intended to be made part of the Ogre Region. The consultation saw participation from members of Ikšķile, Ķegums, Lielvārde and Ogre Regional Councils, representatives of the Ministry and mass media, as well as other participants. Later on, on 1 and 29 August, 30 October and 25 November 2019 the Ikšķile Regional Council held meetings with local governments where the proposed reform was discussed. The last meeting was also attended by the Minister for Environmental Protection and Regional Development Juris Pūce (*see vol. 3, pp. 55 and vol. 5, pp. 119–130 of materials in the Case*).

On 2 October 2019, the Ikšķile Regional Council adopted the Decision on the administrative-territorial reform, which states, *inter alia*, that the Council objects to merging the Ikšķile Region with the Ķegums, Lielvārde and Ogre Regions because the socio-economic indicators and development prospects of the Ikšķile Region are significantly better that those of the other local governments to be made part of the new Ogre Region. Furthermore, the Ikšķile Region has materially different priorities, as it clearly belongs to the vicinity of Riga (Pierīga), which, among other aspects, is characterised by positive demographic trends,

manifest commute to Riga and high income levels among local residents. In its Decision, the Council requested that *the Saeima* made the Ikšķile Region part of the Pierīga Region. Furthermore, when adopting the Decision of 17 December 2019 with regard to the Draft Law on Administrative Territories and Residential Areas, the Ikšķile Regional Council reiterated its previous arguments and requested the Committee and *the Saeima* to consider merging the Ikšķile Region with the Salaspils Region, thus promoting its development 'in the direction of Riga' (*see vol. 3, pp. 130–137 and pp. 140–142 of materials in the Case*).

The opinion of the Ikšķile Regional Council and local residents was heard at the Committee meetings on 28 January and 7 February 2020 when proposals with regard to the Ikšķile Region were discussed. Among other matters, the Committee meetings discussed merging the Ikšķile Region and the Salaspils Region. Prior to passing on the Draft Law to *the Saeima* for third reading, the Committee considered proposals with regard to the Ikšķile Region at its meetings on 5 and 6 May 2020, but representatives of the Ikšķile Regional Council were not given opportunity to express their position at the meetings (*see audio records of meetings of the Saeima Administrative-Territorial Reform Committee in vol. 3, p. 140 and meeting minutes available https://www.saeima.lv*).

On top of that, while the Draft Law was being prepared and considered, the Ikšķile Regional Council expressed its opinion about the reform in numerous letters to the Ministry, *the Saeima* and other government authorities and officers. In one of these letters sent to the Ministry on 14 June 2019 the Ikšķile Regional Council stated that it did not support the proposed joining of the Ikšķile Region to the Ogre Region and asked a number of questions about the reform and its possible consequences. Furthermore, in March 2020, the Council sent two letters to all parliamentary groups and MPs who do not belong to any of them with request to consider the proposal on merging the Ikšķile and the Salaspils Regions (*see vol. 3, pp. 114–117 and pp. 143–151 of materials in the Case*).

The Constitutional Court has concluded that, while the Draft Law was prepared and considered, the Ikšķile Regional Council repeatedly informed the Ministry and the Committee, as well as other authorities and officers of its

willingness to preserve the status of an independent administrative territory or, failing that, to merge with the Salaspils Region. Arguments behind these proposals and objections were consistent. Likewise, the Council found out the opinion of local residents in an opinion poll and during meetings. The Ikšķile Regional Council and representatives of local residents also had the opportunity to express their opinion at the Committee meetings.

The Constitutional Court has concluded the following: if change in the local government boundaries takes place as part of an overall reform, the interest of specific local governments to be heard repeatedly is proportionate to the interest of other local governments and the entire State to complete the reform within a reasonable time framework (*see paragraph 13.4 of the Constitutional Court Judgment of 30 October 2009 in Case No 2009-04-06*). The right of a local government to be heard can be restricted further if, rather than new solutions, the matter concerns solutions of the administrative-territorial division that have already been discussed on numerous occasions and where the Committee has already taken its decision. Therefore, the Committee was under no obligation to once again hear the representatives of the Ikšķile Regional Council before passing on the Draft Law to *the Saeima* for third reading.

It follows that local residents and the Local Council of the Ikšķile Region had the opportunity to prepare their opinion and to submit their proposals and objections to the responsible government authorities.

23.4.2. The Limbaži Regional Council agreed with the model of territorial division initially proposed by the Ministry, whereby the new Limbaži Region after the reform would include the existing Aloja, Limbaži and Salacgrīva Regions, and would also include Skulte Municipality. In support of this solution, the Limbaži Regional Council adopted the respective Decision on 25 April 2019 (*see vol. 1, p. 48 of materials in the Case*).

Consultation with the concerned local governments took place on 25 June 2019. Later on, on 22 August 2019, the Limbaži Regional Council adopted the Decision on expressing an opinion about the administrative-territorial division to the Latvian Association of Local Governments, stating, *inter alia*, that

the Council supports the Conceptual report prepared by the Cabinet on the condition that no specific municipalities are separated from the administrative territory of the existing region (*see vol. 1, p. 51 of materials in the Case*).

The solution with regard to the Limbaži Region proposed by the Ministry was used in the Draft Law submitted by the Cabinet to *the Saeima*. The Limbaži Regional Council notes that, after the information about the possible separation of the territory from the existing administrative territory of the region appeared in mass media, the Council, in November and December 2019, sent numerous letters to all parliamentary groups and members of the Committee. The letters requested that the declared aims and tasks of the reform and results of previous studies be observed and the administrative territory of the region not be divided. 1 717 signatures of local residents of the Limbaži Region were submitted in support of preserving the integrity of the region in the course of the reform (*see vol. 1, pp. 60–152 and vol. 2, pp. 47–65*).

The proposal for establishing the Saulkrasti Region, which would also include Skulte Municipality that was formally part of the Limbaži Region, was submitted before considering the Draft Law at second reading. The Committee meeting of 28 January 2020, where the proposal in question was discussed, was attended by the Chairperson of the Limbaži Regional Council who was given the opportunity to express an opinion about preserving the integrity of the Region. Members of the Committee, *the Saeima* Legal Bureau, the Ministry, representatives of the Association of Local Governments and other persons also participated in the discussions. At this meeting, the Committee voted to give its conceptual support to establishing the new Saulkrasti Region, with Skulte Municipality as part of it (*see vol. 3, p. 140 of the audio record of the Saeima Administrative-Territorial Reform Committee meeting of 28 January 2020 and the meeting minutes available at https://www.saeima.lv*).

On 29 January 2020, the Limbaži Regional Council decided against supporting the above proposal, stating that no appropriate assessment of the proposal was given, and the local government has both the right and obligation to find out the opinion of local residents (*see vol. 2, pp. 66–68 of materials in the*

Case). According to the Limbaži Regional Council, a meeting of local residents of Skulte Municipality took place on 4 February 2020, which was attended by a representative of the Committee Jānis Dombrava and where the proposal for making Skulte Municipality part of the Saulkrasti Region was discussed. At the meeting, local residents gave their support to maintaining the integrity of the administrative territory of the Limbaži Region (*see vol. 1, p. 14 of materials in the Case*). On 5 February 2020, consultation of representatives of the Committee and the Ministry with representatives of the regional councils of the Saulkrasti, Limbaži, Krimulda and Sēja Regions took place (*see vol. 3, pp. 38–47 of materials in the Case*).

At the extraordinary meeting of 10 February 2020, which was attended by the Chairperson of the Committee and a representative of the Ministry, the Limbaži Regional Council adopted the Decision on giving the opinion of the Limbaži Regional Council to the Administrative-Territorial Reform Committee of *the Saeima* of the Republic of Latvia. The minutes of the meeting state, *inter alia*, that the Limbaži Region made significant investments in infrastructure of Skulte Municipality, including those under EU projects. In the case of Skulte Municipality becoming part of the administrative territory of the Saulkrasti Region the Limbaži Region would lose a significant part of its territory and population, and therefore regional budget funds (*see vol. 2, pp. 89–91 of materials in the Case*).

At its meetings on 11 and 25 February 2020, the Committee considered proposals with regard to the Limbaži Region and the new Saulkrasti Region and heard opinions of representatives of the Limbaži Regional Council about the integrity of the existing administrative territory of the Limbaži Region. The opinion of the Chairperson of the Limbaži Regional Council was also heard at the Committee meeting on 6 May 2020 when the Draft Law was considered before third reading. While the Draft Law was at the consideration stage, the Council expressed its opinion also in numerous letters sent to the Committee, the Ministry and other government authorities and officers (*see audio records of meetings of the Administrative-Territorial Reform Committee of the Saeima in vol. 3, p. 140 of materials in the Case and meeting minutes available https://www.saeima.lv*).

The Constitutional Court has concluded that the Limbaži Regional Council made its opinion about the reform known to government authorities and officers on numerous occasions by sending its objections and proposals. Arguments of the Council were mostly unchanged. Local residents also expressed their opinion by giving their signatures and taking part in a meeting. Furthermore, the opinion of the Limbaži Regional Council and local residents was also heard by the Committee meetings.

It follows that local residents and the Local Council of the Limbaži Region had the opportunity to prepare their opinion and to submit their proposals and objections to the responsible government authorities.

23.5. The assessment of the legitimacy of the consultation process also requires considering whether local residents and the Local Council were given sufficient time to prepare their opinion and submit it to the responsible government authorities.

23.5.1. The Constitutional Court has already concluded that the Ikšķile Regional Council expressed its opinion on numerous occasions starting with the beginning of the reform preparation process until the Draft Law was considered by the Committee prior to passing it over for third reading.

It follows that local residents and the Ikšķile Regional Council had the opportunity to prepare within reasonable time framework their opinion about the solution for the administrative-territorial division planned under the reform in respect of the Ikšķile Region.

23.5.2. The Constitutional Court has already concluded that, while the Draft Law was being prepared and considered, the Limbaži Regional Council on numerous occasions gave its support to the administrative-territorial division model initially proposed by the Ministry and to preserving the integrity of the Limbaži Region in the course of the reform. At that time, the Limbaži Regional Council had not yet found out the opinion of local residents on its own initiative. The Council holds that it became necessary to find out the opinion of local residents when, in the course of considering the Draft Law, a proposal was made that the Council did not agree to.

The proposal for establishing the new Saulkrasti Region which would include Skulte Municipality was submitted on 18 December 2019. On 28 January 2020, the Committee took the decision to give its conceptual support to the proposal. At the Committee meeting of 25 February 2020, the initial proposal to establish the new Saulkrasti Region was partially supported and included in the Committee's proposal.

The proposal was assessed and consultation with the local governments concerned took place between 28 January and 25 February 2020. It should be taken into account that the Limbaži Regional Council kept emphasising its opinion about preserving the integrity of the existing Limbaži Region from the beginning of the reform preparation stage. In addition to that, the opinion of at least 1 717 local residents of the Limbaži Region with regard to keeping the integrity of the existing Limbaži Region had already been received and these signatures were submitted to *the Saeima* in December 2019.

It follows that local residents and the Limbaži Regional Council had the opportunity within a reasonable time framework to prepare their opinion about the proposal to make Skulte Municipality part of the new Saulkrasti Region.

23.6. Substantive assessment of the local government proposals and objections is an important part of the consultation process. The Constitutional Court has concluded that relations between legal entities subject to public law are governed by the principle of procedural economy, which allows direct or indirect reference to previous observations or previously provided information (*see paragraph 23.2 of the Constitutional Court Judgment of 3 December 2020 in Case No 2020-16-01*). It means, *inter alia*, that once the arguments have been considered, they don't need to be considered again.

23.6.1. The Ikšķile Regional Council and the government institutions responsible for the reform hold different opinions as to whether proposals and objections of the local government were duly considered and whether the government authorities gave substantial reply to the local government's questions.

The Ministry claims that it assessed proposals of the Ikšķile Regional Council and also prepared numerous letters in response to objections of the Ikšķile

Regional Council. The proposals and objections of the Ikšķile Regional Council were not in line with the general aims of the reform and criteria for establishing regions, wherefore the Ministry did not take them into account (*see vol. 3, pp. 138–139 of materials in the Case*). Furthermore, political matters pertaining to the reform were also regularly discussed by the Development Committee, with the meetings being attended by representatives of the coalition partners. The received proposals and objections and possible solutions were also considered at regular meetings of the working group set up by the Ministry (*see vol. 3, pp. 118–119 and pp. 123–129 of materials in the Case*).

Minutes and audio records of the Committee meetings reveal that proposals with regard to the existing Ikšķile Region were considered and discussed at the Committee meetings. At *the Saeima* sitting considering the Draft Law at second reading, the parties that had submitted the proposals withdrew them. Proposals pertaining to the Ikšķile Region were considered at third reading on 9 June 2020. It follows from transcripts of *the Saeima* sittings that numerous MPs took part in the debates about these proposals, discussing various possible solutions with regard to the Ikšķile Region (*see the transcript of the Saeima sitting of 9 June 2020 available at https://www.saeima.lv*). It follows that proposals with regard to preserving the Ikšķile Region as a separate local government or making it part of the Salaspils Region were considered by the Committee and later also at *the Saeima* sittings, taking into consideration the information available to the MPs. However, they were rejected as a result of the vote.

It follows that proposals and objections of the Ikšķile Region were assessed.

23.6.2. When considering the proposal to establish the new Saulkrasti Region, the Committee had been informed of the opinion of local residents and the Limbaži Regional Council that had been expressed on numerous occasions both in writing and in person at the Committee meetings, as well as during consultation and other meetings attended by representatives of the Committee. Representatives of the Ministry and the Association of Local governments also took part in the discussions during the Committee meetings. Representatives of the Ministry informed the Committee that the opinion of the local governments concerned on

the matter of establishing the new Saulkrasti Region remained unchanged following the consultation in Saulkrasti. It follows that the Committee had access to the information about the proposal to establish the Saulkrasti Region. Furthermore, minutes and audio records of the Committee meetings reveal that the Committee heard and substantially evaluated both the proposal under discussion and objections of the local government (*see vol. 3, p. 140 of the audio record of the Saeima Administrative-Territorial Reform Committee meeting of 25 February 2021 and the meeting minutes available at https://www.saeima.lv*).

In the course of considering the Draft Law by *the Saeima* at second reading, proposals pertaining to the Limbaži Region, as well as to establishing the new Saulkrasti Region and including in it Skulte Municipality that was formerly part of the Limbaži Region were discussed on 12 March 2020 and on 9 and 10 June 2020 at third reading. The proposals in question were debated by MPs. Establishing the new Saulkrasti Region and including in it Skulte Municipality that was formerly part of the Limbaži Region was supported by a vote at *the Saeima* at both second and third readings (*see transcripts of the Saeima sittings of 12 March and 9 and 10 June 2020 available at https://www.saeima.lv*).

It follows that proposals and objections of the Limbaži Region were assessed.

23.7. The joined party Iveta Reinholde observes that, as established by the Congress, consultation with the local governments needs to be documented regardless of whether it takes the form of official consultation or informal discussions. Feedback must be provided following the consultation, giving motivated information on the local governments' proposals rejected at the level of the central government. The consultation process needs to be reflected in mass media to allow the public to follow it (*see vol. 13, p. 138 of materials in the Case*).

The Ministry had not established a procedure for consulting local governments, and no minutes were kept of the consultation for the most part. However, the Ministry argues that, between 27 May and 2 August 2019, 30 consultations took place with the local governments that were to be merged in accordance with the administrative-territorial division model proposed by the

Ministry. All local councils of the local governments concerned and their members were informed of the consultations in due course, and each consultation lasted at least two hours. Members of the local councils and other parties concerned were given the opportunity to give their opinion, and the Minister replied to questions of the participants. Information on the time and place of the expected consultations was available on the website of the Ministry. 1 312 people attended the consultations, 947 of them being members of the local councils (*see vol. 5, p. 99 of materials in the Case*). It follows that the Ministry held consultations with local governments in accordance with the previously prepared and published plan.

On 5 February 2020, representatives of the Committee and the Ministry held a meeting with members of the local councils affected by the decision to establish the Saulkrasti Region; unlike consultation held during the preparatory stage of the reform, minutes of this consultation were kept. However, the Limbaži Council noted that it had only received minutes of the meeting on 11 June 2020 when the Law on Administrative Territories had already been adopted.

The Constitutional Court draws attention of responsible government authorities to the fact that for the purposes of open and reliable consultation process it is advisable to establish a procedure for consulting local governments, including the way the opinion of local residents is surveyed, and to keep minutes of in-person meetings. It would later allow to gain assurance that proposals and objections of the local government were heard in the course of the reform and to avoid mutual blame between the authorities involved and different interpretations of the consultation process. Keeping minutes of consultations and providing the minutes to the local government in due course is, of course, advisable, but it does not affect either the fact that the consultations actually took place or the substance of the consultations. It follows from materials in the case that consultation with the respective local governments was held during the period of preparing and considering the contested provisions. Members of the Ikšķile and Limbaži Local Councils and other stakeholders were informed of the matters discussed at the consultations, as they could take part in them and express their opinion. Furthermore, the consultations were also covered by mass media.

Documents on preparing and adopting the contested provisions reveal that the local governments' opinion of whether consultation in the course of the reform was appropriate and in line with requirements of the Charter to a great extent depends on whether the local government agrees or disagrees with the proposed administrative-territorial division model and whether it has or has not been amended in accordance with the opinion, proposals and objections of the local government. However, the reform and the administrative-territorial division resulting from it, as well as objections and proposals of specific local governments are assessed by the responsible government authorities in reference to each other. Individual opinion of each specific local government about its favoured territorial division model does not always coincide with interests of the public as a whole. It follows that consultation with the local government, provided that it has taken place in fact, is deemed held in a due manner also in the case where opinion of the local government was not given support when taking the final decision.

The Constitutional Court has concluded the following: the fact that the responsible government authorities, taking into account information available to them, did not amend the administrative-territorial solutions in accordance with proposals and objections of the Limbaži Regional Council and the Ikšķile Regional Council does not mean that consultation with the local governments did not take place or did not comply with requirements of the Constitution or the Charter. Also *the Saeima*, when adopting the contested provisions at final reading, was aware of the Applicants' interests and the administrative-territorial division model favoured by them. *The Saeima* could take them into account insofar as it was possible to align them with the general interests of the public and choose the best possible solutions for the administrative-territorial division.

It follows that, upon evaluation of the overall process of drafting and consideration of the contested provisions, it can be concluded that consultation with the respective local governments was carried out in accordance with the relevant regulations.

24. The Ikšķile Regional Council observes that the process of preparing and considering the contested provisions by *the Saeima* involved numerous violations, i.e. this process was not in line with the Rules of Procedure of *the Saeima*. Violations can be identified, *inter alia,* in setting up the Committee and adopting the contested provisions by remote sittings of *the Saeima*.

The Saeima argues that it committed no violations when setting up the Committee and it acted within its discretionary powers. Adopting the contested provisions via the *e-Saeima* platform is in line with the Constitution and the Rules of Procedure of *the Saeima*. This process allowed MPs to exercise all their rights. Furthermore, *the Saeima* sittings were held remotely for objective reasons, i.e. taking into account the threat caused by the spread of the Covid-19 infection and the necessity to ensure uninterrupted work of the Parliament.

Taking into consideration the arguments of the participants in the case, to find out whether the consideration and adoption of the contested provisions in *the Saeima* complied with the relevant regulations, the Constitutional Court will examine the issues related, firstly, to the setting-up of the Administrative-Territorial Reform Committee of *the Saeima* and to the passing on of the Draft Law to that Committee, and, secondly, to the procedure for remote sittings of *the Saeima* on the *e-Saeima* platform.

24.1. The Ikšķile Regional Council holds that setting up a dedicated Committee specifically for considering the Draft Law, the procedure of setting up the Committee and electing the Parliamentary Secretary of the Ministry as the Chairperson of the Committee constitute violation of the principle of good legislation.

On 15 October 2019, the Cabinet approved the Draft Law on Administrative Territories and Populated Areas and it was submitted to *the Saeima* on 21 October 2019. On 24 October 2019, *the Saeima* passed on the Draft Law to the Public Administration and Local Government Committee and appointed it the responsible authority. By the decision taken at the Committee meeting on 29 October 2019, the Draft Law was approved and it was decided to pass it on to *the Saeima* for consideration at first reading.

On 7 November 2019, *the Saeima* adopted the Draft Law at first reading. On the same day, pursuant to Article 150 of the Rules of Procedure of *the Saeima*, *the Saeima* adopted the Decision establishing a special Administrative-Territorial Reform Committee, assigning to the Committee the task of considering the Draft Law and other draft legislation and matters pertaining to the reform and its implementation. In accordance with the Decision, *the Saeima* elected to the Committee one MP from each parliamentary group. On 21 November 2019, *the Saeima* took decision to appoint the Administrative-Territorial Reform Committee as the committee responsible for the Draft Law.

24.1.1. Article 25 of the Constitution: '*The Saeima* shall establish committees and determine the number of members and their duties. Committees have the right to require of individual Ministers or local government authorities information and explanations necessary for the work of the committees, and the right to invite to their sittings responsible representatives from the relevant ministries or local government authorities to furnish explanations. Committees may also carry on their work between sessions of *the Saeima*.' The Constitutional Court has concluded that the Rules of Procedure of *the Saeima* entrust a significant portion of work to committees. The responsible committee ensures that a draft law is duly prepared for consideration at *the Saeima* sitting (*see paragraph 18 of the Constitutional Court Judgment of 19 December 2011 in Case No 2011-03-01*).

Pursuant to Article 150 of the Rules of Procedure of *the Saeima*, *the Saeima* may establish special committees for specific legislative tasks. The Constitutional Court has concluded that *the Saeima* as the legislature directly and democratically legitimised by the people enjoys autonomy in its work, including matters of organising its work. The matter of passing on a draft law to a specific committee is a matter of organising the work of *the Saeima* which it can solve within its discretionary powers (*see paragraph 23.4 of the Constitutional Court Judgment of 3 December 2020 in Case No 2020-16-01*). It follows that *the Saeima* was entitled to establish the Administrative-Territorial Reform Committee and to appoint it as the committee in charge of the Draft Law, as the majority of *the Saeima* had considered this decision to be necessary and practicable.

24.1.2. Pursuant to Article 149(2) of the Rules of Procedure of *the Saeima*, the principles of establishing committees are determined by *the Saeima*. Committees are mainly established on the basis of the principle of proportional representation. The representative of *the Saeima* argued at the court hearing that this principle has a rationale behind it – it ensures that the composition of the committee represents the majority of *the Saeima* so that the committee may operate efficiently (*see the transcript of the court hearing of 10 February 2020 in vol. 19, p. 99 and pp. 125–126 of materials in the Case*). The aim of the principle of proportional representation in setting up committees of *the Saeima* is to ensure that the minority opinion is also represented in them.

However, within the limits of its autonomy and discretionary powers, *the Saeima* may also take a decision to set up a committee on the basis of the principle of equal representation. Even though the Administrative-Territorial Reform Committee was not established in accordance with the principle of proportional representation, its composition still reflected the majority of *the Saeima* and the parliamentary opposition was represented in it. Thus, *the Saeima* was entitled to establish the Committee also according to the equal representation principle.

24.1.3. On 21 November 2019, members of the Committee, by a majority vote, elected one of its members – Artūrs Toms Plešs, who was the Parliamentary Secretary of the Ministry at the time – as the Chairperson. Pursuant to Sections 4(1)(2) and 4(1)(3) of the Law on Prevention of Conflict of Interest in Activities of Public Officials, both a Member of *the Saeima* and a parliamentary secretary are considered public officials. Pursuant to Section 7(2)(2) of the Law, a parliamentary secretary may combine their office with another office in *the Saeima* if it is determined by decisions of *the Saeima* and its bodies. Therefore, regulations do not prohibit simultaneously holding the office of a parliamentary secretary and that of the Chairperson of *the Saeima's* committee.

The permissibility of combining offices in this way has to be assessed also from the point of view of parliamentary ethics. Pursuant to paragraphs 4, 5 and 6 of Annex 'The Code of Ethics of Members of *the Saeima*' to the Rules of Procedure of *the Saeima*, a Member of the Parliament shall in good faith fulfil the obligations

assumed by the solemn oath, respect and always observe the Constitution, the Rules of Procedure of *the Saeima* and other regulations, shall be morally responsible for his or her actions, and may not use pressure of government representatives or other individuals as excuse to justify voting against his or her conscience.

It follows that in setting up the Committee and passing on the Draft Law to it *the Saeima* acted within its discretionary powers.

24.2. It is the opinion of the Ikšķile Regional Council that holding *the Saeima* sittings remotely violates the legislative process established by the Constitution and the Rules of Procedure of *the Saeima*. MPs, especially those representing the opposition, could not exercise their rights in the process of adopting the Law on Administrative Territories. If a sitting takes place on the *e-Saeima* platform, MPs are not physically in the same location in Riga or elsewhere, as required by Article 15 of the Constitution. Even if in an emergency situation there are reasons to summon a remote sitting of *the Saeima*, such sittings may not consider and adopt draft laws that are not urgent. Furthermore, the emergency situation declared in Latvia had ended by 10 June 2020 when the Law on Administrative Territories was adopted.

24.2.1. A sitting of *the Saeima* is a parliamentary discussion summoned according to the specified procedure where *the Saeima* exercises its legislative power, including adopting legislation. Article 15 of the Constitution: '*The Saeima* shall hold its sittings in Riga, and only in extraordinary circumstances may it convene elsewhere.' This provision of the Constitution regulates the location of *the Saeima* sittings whereby, except in extraordinary circumstances, sittings of *the Saeima* are held in Riga, whereas in extraordinary circumstances they can take place elsewhere. Therefore, Article 15 of the Constitution sets out the place rather than the form of holding *the Saeima* sittings.

At the court hearing, the parties to the case and joined parties gave different opinions as to whether *the Saeima* sittings held on the *e-Saeima* platform are considered to be held 'elsewhere' and if 'extraordinary circumstances' existed in the meaning of Article 15 of the Constitution at the time of adopting the Law on

Administrative Territories. However, the arguments concerning *the Saeima's* sitting being held on the *e-Saeima* platform are essentially not about the place where the sitting took place, but about the procedure of that sitting. Namely, objections of the Ikšķile Regional Council concern the possibilities of exercising the democratic process on the *e-Saeima* platform. Therefore, the key issue in the case under consideration is not about the place where *the Saeima's* sitting is held but about the compliance of the procedure of that sitting with legal provisions.

Pursuant to Articles 22 and 23 of the Constitution, sittings of *the Saeima* are public and can take place if at least half of the Members of *the Saeima* are present. Pursuant to Article 19 of the Constitution, the Presidium shall schedule regular and extraordinary sittings of *the Saeima*. The Presidium is a body of *the Saeima* which, along with the functions directly set out in the Constitution, is entitled to regulate the work of *the Saeima* and its internal procedures to the extent that the Presidium is authorised to do so by the Rules of Procedure of *the Saeima* or other law (*see paragraph 1.2 of Conclusions in the Constitutional Court Judgment of 22 February 2002 in Case No 2001-06-03*).

Pursuant to Article 21 of the Constitution, *the Saeima* shall establish rules of order to provide for its internal operations and order. This Article enshrines the principle of the autonomy of the parliament, i.e. the rules of its internal operations and order are established by *the Saeima* rather than some other authority (*cf. paragraph 14 of the Constitutional Court Judgment of 23 December 2019 in Case No 2019-08-01*).

To evaluate whether the sittings of *the Saeima* in which the contested provisions were adopted were held in accordance with regulations, the Constitutional Court has to establish: 1) whether the procedural arrangements for holding *the Saeima's* sittings on the *e-Saeima* platform were put in place and known to all MPs; 2) whether the principle of public sitting of *the Saeima* was observed in the sittings held on the *e-Saeima* platform; 3) whether, in considering the Draft Law at third reading and adopting the Law on Administrative Territories on the *e-Saeima* platform, the MPs were able to exercise all their rights in accordance with the Constitution and the Rules of Procedure of *the Saeima*.

24.2.2. On 22 May 2020, the Presidium of *the Saeima* adopted the Decision approving the procedure of remote sittings of *the Saeima*. Pursuant to paragraph 2 of Annex 'Procedure of remote sittings of *the Saeima*' to this Decision, remote sittings of *the Saeima* are held in accordance with provisions of the Rules of Procedure of *the Saeima* and this Decision. *The Saeima* also noted that the above Decision governs only technical matters and does not provide for a different legal procedure than that set out in the Rules of Procedure of *the Saeima*. It follows that sittings of *the Saeima* on the *e-Saeima* platform were held in compliance with the Constitution and the Rules of Procedure of *the Saeima*, whereas technical details of participation in remote sittings of *the Saeima* were set out in the *Saeima's* Presidium Decision of 22 May 2020.

Beginning the consideration of the Draft Law at third reading on 26 May 2020, the Head of *the Saeima* sitting, Speaker of the 13th *Saeima* Ināra Mūrniece, made sure that all MPs had connected to the *e-Saeima* platform, gave reasons for holding *the Saeima* sitting remotely and shortly described the basic principles of the platform's operation. The Members of *the Saeima* were also provided the necessary technical and information support before and during the sittings in order to enable them to participate in the remote sittings of *the Saeima* in a proper manner (*see the transcript of the Saeima sitting of 26 May 2020 available at https://www.saeima.lv*).

The emergency situation declared because of the spread of the Covid-19 infection ended on 10 June 2020. However, despite the end of the emergency situation, distancing and gathering restrictions were kept in place in Latvia in view of the epidemiological situation. In its letter sent to *the Saeima* on 9 June 2020, the Centre for Disease Prevention and Control recommended that *the Saeima* continue to observe the two-metre distance and promote remote work (*see vol. 4, p. 35 of materials in the Case*).

On 10 June 2020, the Presidium of *the Saeima* adopted the Decision on holding sittings of *the Saeima* on the *e-Saeima* platform. With reference to, *inter alia*, recommendations of the Centre for Disease Prevention and Control and the opinion of the Legal Bureau of *the Saeima*, this Decision provided that 'until

further decision of the Presidium, the agenda of convened sittings of *the Saeima* shall continue to be discussed, and sittings of *the Saeima* shall continue to be convened and held on the *e-Saeima* platform'. It follows that, in view of, *inter alia*, epidemiological safety considerations, the decision of *the Saeima* Presidium to hold sittings remotely on the *e-Saeima* platform was justified not only on 26 and 29 May and 2, 3 and 9 June, but also on 10 June, when the emergency situation declared in Latvia ended.

Therefore, the procedural arrangements for holding *the Saeima's* sittings on the *e-Saeima* platform were put in place and known to all Members.

24.2.3. Article 22 of the Constitution, pursuant to which sittings of *the Saeima* shall be public, requires that MPs discuss matters of the sitting agenda with direct or indirect presence of the public. The public nature of sittings of *the Saeima* is ensured by enabling voters to be physically present in *the Saeima* and observe sittings of the parliament, complying with security considerations.

In practice, voters in Latvia are also able to follow the sittings indirectly, i.e. mass media and journalists are enabled to inform the public about the parliament sittings. Likewise, *the Saeima* publishes draft agendas, documents under consideration, results of votes and transcripts of sittings.

When the Draft Law was considered at third reading on the *e-Saeima* platform on 26 and 29 May and 2, 3, 9 and 10 June, the video of *the Saeima* sitting was broadcast live, and its records also became available later. Additionally, the agenda of the sitting, the documents considered at it, results of the vote and the transcript of the sitting were also published. Therefore, any concerned individual, including journalists, could follow *the Saeima* sitting live or see information about the progress of the sitting and matters discussed at it on *the Saeima* website.

Therefore, the principle of public sittings of *the Saeima* was observed in the sitting at which the Draft Law was considered and passed.

24.2.4. Pursuant to Article 7 of the Rules of Procedure of *the Saeima*, each MP is obliged to participate in the work of *the Saeima*. The key right of an MP during the sittings is to participate in the debates and to vote. The Constitutional Court has emphasised that the parliament plays a crucial role in democratic

political debates. In exercising their official duties, Members of Parliament represent their voters, draw attention to issues that are important for the voters and protect their interests. Therefore, exercise of MPs' rights facilitates efficient operation of democracy, i.e. legitimisation of the legislature and diversity of opinions among Members of Parliament in accordance with the will expressed by the sovereign (*see paragraph 19 of the Constitutional Court Judgment of 23 December 2019 in Case No 2019-08-01*).

The *e-Saeima* platform enables each MP to participate in the debates, express their opinion by voting and follow the results of votes via a video conferencing tool. This was also confirmed at the beginning of *the Saeima* sitting on 26 May 2020 by the representative of vote counters Rihards Kols, who presented the results of testing the *e-Saeima* platform by the vote counters. Before the sitting, the vote counters tested, among other aspects, the capability of MP authentication, MP voting, displaying voting results and online debates. No technical faults or irregularities were revealed in any of the tests.

The representative of the Ikšķile Regional Council argued at the court hearing that the opposition members of *the Saeima* cannot properly exercise their rights because they are unable to see other MPs, and there are no in-person talks and discussions outside the sittings (*see the transcript of the court hearing of 13 January 2021 in vol. 16, pp. 114–115 of materials in the Case*). However, any possible shortcomings resulting from a lack of in-person communication equally affects all MPs – those in position and opposition, as well as those who do not belong to parliamentary groups.

It follows from information available on *the Saeima* website (transcripts of sittings, video records, summaries of voting results) that all MPs were able to exercise their right to debate and vote when the Draft Law was considered at third reading, including proposals with regard to the Limbaži Region and the Ikšķile Region. Therefore, in the course of considering the Draft Law at third reading and adopting the Law on Administrative Territories on the *e-Saeima* platform, MPs were guaranteed all the rights set out by the Constitution and the Rules of Procedure of *the Saeima*.

The Constitutional Court has concluded that holding sittings of *the Saeima* remotely is an extraordinary solution that enables the continuation of uninterrupted work of the Parliament in circumstances where MPs are unable to meet in person for reasons of epidemiological safety and restrictions imposed because of them. It is important that the State has established a mechanism that ensures uninterrupted work of the Parliament in the course of which decisions on the most significant issues are made by the legitimate constitutional body. Furthermore, there are no legal provisions that would restrict the powers of *the Saeima* in such situations to making decisions on, for instance, only urgent matters to be resolved by legislative means.

Hence, the consideration and adoption of the contested provisions by *the Saeima* were in accordance with the relevant regulations. It follows that the contested provisions were drafted and adopted in a proper procedure.

25. The Constitutional Court also has to assess if the legislature did not act arbitrarily when adopting the contested provisions.

The Limbaži Regional Council objects to joining Skulte Municipality, which was previously part of the Limbaži Region, to the new Saulkrasti Region because this would deprive the Limbaži Region of a part of its territory, population and, therefore, resources important for its development. Therefore, sustainable development of the region is put at risk and its financial autonomy is infringed. The Limbaži Regional Council also argues that the new Saulkrasti Region does not comply with the criteria for establishing regions set out in the Annotation to the Draft Law because Saulkrasti – the administrative centre of the new region – is not a regional development centre. Furthermore, there is still much uncertainty as to the way Skulte Municipality will in practice be separated from the administrative territory of the Limbaži Region and made part of the new Saulkrasti Region. It should also be taken into account that, over the past years, the local government of the Limbaži Region made significant investments in infrastructure in Skulte Municipality, including investments from the EU funds.

In the opinion of the Ikšķile Regional Council, the legislature did not clearly formulate the aim of the reform. When taking the decision with regard to the Ikšķile Region, *the Saeima* did not take into account the identity, specialisation and interests of the local community that make this region materially different from other regions with which it is to be merged in the course of the reform. Ikšķile is to be considered a potential development centre, which is why the Ikšķile Region is to be preserved as a separate administrative territory. However, if it is impossible to preserve the status of the region, merging the Ikšķile Region with the Salaspils Region, which is a Pierīga region, would be a more feasible solution. Representation of residents of the former Ikšķile Region and their ability to influence decisions taken by the new local government would be significantly reduced in the unified Ogre Region.

The Saeima observes that the aim of the reform is specified in its decision of 21 March 2019. Whereas criteria for establishing regions were removed from the Draft Law following the proposal of the Legal Bureau of *the Saeima*, they can be found in the Annotation to the Draft Law. The Committee and *the Saeima* took these criteria into consideration when making decisions with regard to the administrative-territorial division, whereas in the cases where the legislature deviated from these criteria the decisions were carefully considered and taken within the discretionary powers of *the Saeima*.

To evaluate whether the legislature, in adopting the contested provisions, did not act arbitrarily, the Constitutional Court has to establish the following: 1) whether the aim of the reform is defined and whether it pursues the general benefit of the society; 2) whether the criteria at the basis of the reform focus on achieving the aim of the reform; 3) whether, in adopting the contested provisions, the legislature has taken into account the aim of the reform and the criteria for achieving it; 4) whether the legislature has weighed up the interests of the local community concerned, that is, the advantages and drawbacks of the particular solution for administrative-territorial division, including whether, in adopting the contested provisions, the legislature has respected the local community's right to democratic participation.

26. It follows from the Decision of *the Saeima* of 21 March 2019 that the aim of the reform is ‘to establish by 2021 administrative territories with local governments capable of economic development that would be capable of exercising their autonomous functions set out by law with comparable quality and accessibility and provide high quality services to local residents at comparable cost’.

Detailed aims of the reform are specified in numerous policy planning documents of the Cabinet. For instance, the Cabinet Information Report of 14 May 2019, *inter alia*, lists the following aims of the reform: improvement of the national and local economic growth and competitiveness; ensuring economic use of the national budget funds in the administration across the state; establishing a system of equal and sustainable local governments by uniting regional and national development centres with their respective rural territories in a single administrative, economic and management unit; creating mechanisms for better operational efficiency of local governments in towns and municipalities by increasing participation of local residents of the respective territories; strengthening the autonomy and capacity of local governments, ensuring compliance with the principle of subsidiarity; ensuring that local governments are capable of exercising their functions set out by law independently (*see p. 2 of the Cabinet Information Report ‘On the model of administrative-territorial division proposed for public discussion*). Firstly, the aims specified in this document detail the aim set out in the Decision of *the Saeima* of 21 March 2019, and, secondly, these detailed aims serve as a basis for the aims of implementing the reform and all the general public benefits to be achieved as a result of the reform.

Even though the Decision of *the Saeima* of 21 March 2019 is not a legal instrument, it reflects the decision of *the Saeima* in respect of the reform and its aim. In the opinion of the Constitutional Court, this aim is sufficiently clear and specific. It is derived from the policy planning documents adopted as early as 2013 and which, taking account of results of the administrative-territorial reform implemented in 2008–2009, consistently emphasise the necessity to revise the

former administrative-territorial division and establish a network of local governments capable of proper exercise of their functions, and development.

26.1. The court hearing heard different opinions as to whether the administrative-territorial reform under examination can be considered as a continuation of the previous administrative-territorial reform or a new reform. *The Saeima*, the Cabinet and the Ministry argued that the reform under examination is a continuation of the administrative-territorial reform of 2008–2009 (*see vol. 17, pp. 57, 85, 108 and 116 of the transcript of the court hearing of 20 January 2021 in materials of the Case*). The Applicants stated that this is a new reform implementing a different solution rather than that continuing the previous reform.

The administrative-territorial reform implemented in 2008–2009 was regulated by the Law on Administrative Territories and Populated Areas of 18 December 2008. According to the Law, local governments were to be established on two levels, those of regions and districts. Section 24(1) of the Transitional Provisions of the Law initially provided that the Cabinet was to prepare the Draft Law on establishing districts and submit it to *the Saeima* by 1 June 2009. Later, this deadline was extended to 31 December 2011 and finally to 31 December 2013. The Cabinet did not fulfil this task and the districts were not established.

The administrative-territorial reform under examination is implemented pursuant to the new Law on Administrative Territories which provides for establishing local governments on a single level. Hence, the reform under examination introduces a substantially different solution, i.e. units of administrative-territorial division are created on a single level. It follows that the reform in question is to be deemed a new administrative-territorial reform.

26.2. The need for improvement and streamlining the administrative-territorial division established in the course of the reform of 2008–2009 is proved by numerous policy planning documents of the Cabinet and documents of other authorities, as well as recommendations of international organisations.

The National Development Plan 2014–2020 contained, *inter alia*, the action line ‘Facilitating economic activity in the regions – use of the territories’ potential’

and it was concluded that there are significant socio-economic differences between regions and the cost of public services and infrastructure per person rapidly increase. One of the aims of the action line was establishing an administrative structure of local governments that would enable them to reach their financial capacity for exercising autonomous functions of at least 45 per cent by 2020. Among the tasks to be performed to achieve this aim is the introduction of an improved administrative-territorial division in the state on the basis of analysis of results of the administrative-territorial reform of 2008–2009 (*see paragraphs 366, 379 and 391 of the National Development Plan 2014–2020 approved by the Decision of the Saeima of 20 December 2012*).

On 26 March 2013, the Cabinet accepted for reference Information Report 'Assessment of the Administrative-Territorial Reform' prepared by the Ministry. The report concluded, *inter alia*, that the regions established as a result of the 2008–2009 administrative-territorial reform did not have strong development centres and the regions were disparate population-wise; it was also recommended to consider establishing larger regions around regional and national development centres. It was also acknowledged that, in view of the downward population trend that affects smaller local governments most, the administrative-territorial reform is to be continued by establishing administrative territories according, as far as possible, to the model of national and regional development centres proposed in the Strategy of Sustainable Development of Latvia by 2030 (hereinafter – the Strategy 'Latvija 2030') (*see paragraphs 3.1 and 3.4 of the Cabinet Information Report 'Assessment of the Administrative-Territorial Reform' of 26 March 2013*).

Likewise, Information Report 'On the administrative-territorial division of the State and establishing areas of cooperation between State administration institutions' examined by the Cabinet on 3 May 2017 acknowledged the disadvantages of the existing administrative-territorial division. This report proposed establishing 29 areas of local government cooperation around regional and national development centres (*see paragraph 5 of the Cabinet Information Report 'On the administrative-territorial division of the State and establishing areas of cooperation between State administration institutions' of 3 May 2017*).

On 5 February 2019, the Cabinet accepted for reference Information Report 'On further steps for completion of the administrative-territorial reform'. It identified matters that were not addressed in the course of the 2008–2009 administrative-territorial reform. The report concluded that completing the above reform was necessary to enable all local governments to perform their autonomous functions properly and consistently, to provide local residents with high-quality and more cost-efficient services, to facilitate connection between regional and national development centres and surrounding operational territories, and to enable further decentralisation of state governance (*see p. 3 of the Cabinet Information Report 'On further steps for completion of the administrative-territorial reform' of 5 February 2019*).

The need to implement the reform and the risks of failing to do so were again emphasised in the Cabinet Information Report of 14 May 2019 and Conceptual Report 'On administrative-territorial division' of 18 September 2019.

The importance of the administrative-territorial reform is emphasised also in a number of policy planning documents of the Cabinet. The Declaration of intended activities of the Cabinet headed by Arturs Krišjānis Kariņš specifies implementing the administrative-territorial reform as one of the government's priorities. The Declaration states that the government is committed to completing the reform of local governments by 2021 by merging local governments into more sustainable and economically stronger units capable of exercising autonomous functions of local governments and ensuring their comparable quality and accessibility (*see paragraph 223 of the Declaration of intended activities of the Cabinet headed by Arturs Krišjānis Kariņš*).

26.3. Likewise, numerous studies and reports of Latvian and EU organisations note disadvantages of existing administrative-territorial division and emphasise the need for a reform.

For example, in its audit report of 24 February 2017, the State Audit Office concluded that the drawbacks of the administrative-territorial division directly affect the work of local governments. The Report notes that expenses of some bodies in small local governments can be as much as three times higher than in the

case of a joint organisation, and despite this establishing joint cooperation organisations for providing services is not common practice among local governments. The State Audit Office advised the Cabinet, *inter alia*, 'to consider amending legislation governing the administrative and territorial structure of local governments' (*see pp. 40 and 41 of the State Audit Office Audit Report No 2.4.1-48/5015 'Are the costs of services provided by local governments to local residents adequate' of 24 February 2017'.*

Likewise, the Bank of Latvia 2019 Study concluded that the costs of maintaining local governments with a small population are comparatively high. Furthermore, provided that the current demographic trends are preserved, the population in local government regions over the next 20 years may decrease by up to 15 per cent. One of the proposed solutions involves establishing larger regions (*see pp. 27 and 28 of the Bank of Latvia 2019 Study 'What determines the differences in local government budget expenses in Latvia'*).

The Economic Survey of Latvia prepared by the Organisation for Economic Co-operation and Development also concluded that small local governments are unable to ensure public services of a high quality, including education and public transport services. The survey also recommends to reduce the number of local governments as it would allow significant improvement in the quality of provided services (*see pp. 4 and 6 of the OECD Economic Survey of Latvia, published in May 2019*).

The European Commission Report on Latvia 2020 notes potential positive aspects of the reform, mentioning, *inter alia*, that the small size of local governments restricts opportunities of attracting investment and managing large-scale projects. Balanced development of all regions is important for sustainable development of Latvia. The rearrangement of local governments may facilitate regional development, stimulate economic use of budget funds and reduce administrative costs for the local governments. However, efficient implementation of the administrative-territorial reform and ensuring better public services for local residents requires implementing other reforms, e.g. in the education and healthcare sectors. The authors of the report also note that sustainability of the reform could

be strengthened by a participatory approach that could be achieved by involvement of all stakeholders – local governments, ministries, social partners and civic society (*see pp. 49–50 of the European Commission Report on Latvia 2020 No SWD(2020) 513 final, published on 26 February 2020*).

26.4. The Constitutional Court has already acknowledged that local governments are part of a unified state governance system subordinated to the Cabinet (*see paragraph 12 of the Constitutional Court Judgment of 29 June 2018 in Case No 2017-32-05*). Therefore, the governance principles taken into consideration in organising the work of state administration bodies apply also to local governments. According to the principle of good governance, it is the obligation of the State to continuously review and, if necessary, improve the governance of the State and the system of State governance to ensure that it functions as effectively as possible. As has already been established in the studies mentioned above, people in Latvia increasingly choose to live and work in regional centres, the population decreases, the exercise of the autonomous functions of local governments becomes more expensive and less efficient. In this situation, the aim of the administrative-territorial reform, which is to remove the deficiencies identified, is in line with the common interests of the whole Latvian society.

Thus, the aim of the administrative-territorial reform is focused on the common good of society.

27. In order to achieve the aim of the administrative-territorial reform and to act in a systemic, uniform and consistent manner and to prevent arbitrariness, the reform must be based on guidelines or criteria.

The criteria for establishing regions were initially included in the Draft Law submitted by the Cabinet to *the Saeima* on 21 October 2019. Pursuant of Article 6 of the Draft Law, the following criteria must be observed when merging or dividing regions, or changing their boundaries:

1) the territory is geographically uniform;

2) the territory of a region (with the exception of regions in Pierīga) includes a regional or national development centre specified in planning documents on national development (regional policy guidelines or national development plan);

3) there are at least 15 000 permanent residents in the Pierīga regions;

4) there are possibilities of sustainable development of the territory, and the local government is able to attract significant investments to the territory;

5) it is possible to create an efficient network of educational, culture, healthcare and social services organisations, a network of public transport and roads, as well as a network of public utilities;

6) the number of schoolchildren is sufficient for at least one viable secondary school;

7) the territory is established in an optimum way to enable the local government to exercise its autonomous functions prescribed by law, except in cases where the law provides otherwise.

These criteria were removed from the Draft Law in the course of discussing the Draft Law in *the Saeima*. The Applicants argue that these criteria must be included in the law. The joined party Edgars Pastars also stated that failure to include criteria for establishing regions in the Law on Administrative Territories may be indicative of possible arbitrariness on the part of *the Saeima* and prevents verifying the criteria underlying the establishment of administrative territories in the Annex to the Law (*see the transcript of the court hearing of 26 January 2021 in vol. 19, p. 36 of materials in the Case*).

However, the fact that *the Saeima* removed the criteria for establishing regions from the Draft Law does not indicate arbitrariness on the part of *the Saeima* and the absence of such criteria. The document setting out the criteria for the administrative-territorial reform is a matter of legal technique. The matter of whether these criteria focus on achievement of the aim of the administrative-territorial reform and whether they are not evidently incorrect and unconnected with the aim of the reform is much more important that the document formulating these criteria and their legal nature.

In this specific situation, each criterion for establishing regions in the Annotation to the Draft Law is based on deficiencies identified by the initial assessment of the situation and possible risks for the exercise of local self-government, the aims specified in planning documents on the state policy and trends observed in the society. These criteria are aimed at enabling every local government to exercise its autonomous functions more effectively.

A better and more effective local governance, as well as commensurate costs of the services provided to the residents of local governments, are for the common good of society. The conclusions on the basis of which the criteria were formulated follow from various local and international studies on the situation in Latvia. The Constitutional Court has found that the conclusions are not obviously incorrect.

It follows that the criteria at the basis of the administrative-territorial reform are focused on achieving its aim.

28. The Constitutional Court needs to verify whether the legislature, in adopting the contested provisions, took into account the aim of the reform and the criteria for achieving that aim.

It is *the Saeima* that, upon examining all considerations of a legal and political nature in relation to the common good of society, is responsible for making the final decision if local governments object to the proposed model of administrative-territorial division. Furthermore, considering the substantiality doctrine and the principles of parliamentary democracy, as well as the legislature's freedom of evaluation in deciding on matters related to administrative territorial division, in exceptional circumstances *the Saeima* may take a decision different from that proposed by the Cabinet when presenting the respective draft law. Therefore, in exceptional circumstances, *the Saeima* may depart from the set reform criteria if such departure is based on rational considerations and is in line with the aim of the reform.

The decision taken by the legislature may affect interests of specific existing local governments. However, in their work local governments must pursue not

only the interests of local residents of the respective administrative territory, but also interests of the society as a whole. It is for that reason that the legislature, in making decisions related to the administrative-territorial reform, has to balance different interests of specific local governments and the common interests of society, but it is under no obligation to evaluate the compliance of such decisions with the principle of proportionality as understood in the context of imposing restrictions on fundamental rights.

28.1. The territory of the local government of the Limbaži Region is established by paragraph 55 of Annex 2 to the Law on Administrative Territories and Populated Areas of 18 December 2008, pursuant to which the Limbaži Region comprises the town of Limbaži, Limbaži Municipality, Katvari Municipality, Pāle Municipality, Skulte Municipality, Umurga Municipality, Vidriži Municipality and Viļķene Municipality.

Pursuant to the provision contested by the Limbaži Regional Council, i.e. sub-paragraph 35.4 of the Annex to the Law on Administrative Territories, Skulte Municipality becomes part of the Saulkrasti Region. This decision is based on *the Saeima's* resolution on establishing a separate Saulkrasti Region. Therefore, as a result of the reform the Limbaži Region would lose a part of its former territory, population and, hence, budget revenue.

The establishment of the Saulkrasti Region as such does not infringe the rights of the local government of the Limbaži Region, and the Limbaži Regional Council does not contest the respective provisions. However, the Limbaži Local Council is affected by the contested provision whereby Skulte Municipality that was formerly part of the Limbaži Region becomes part of the new Saulkrasti Region. Therefore, the question whether, in adopting the provision contested by the Limbaži Regional Council, the legislature took into account the aim of the reform and the criteria for achieving it is also connected with the establishment of the new Saulkrasti Region.

Justifying the proposal to establish the Saulkrasti Region and to join to it Skulte Municipality that was formerly part of the Limbaži Region at the Committee meetings on 28 January and 25 February 2020, a Member of *the*

Saeima and a member of the Committee Jānis Dombrava argued, *inter alia*, that Saulkrasti is a potential development centre, which is why establishing the Saulkrasti Region is important in the context of regional and national development (*see audio records of the Saeima Administrative-Territorial Committee meetings in vol. 3, p. 140 of materials in the Case and meeting minutes available https://www.saeima.lv*).

Initially, the Ministry did not give its support to establishing the new Saulkrasti Region and gave its opinion in the letter sent to the Committee on 21 February 2020 and at the Committee meeting on 25 February 2020. The main argument of the Ministry was that the town of Saulkrasti does not have the status of a regional development centre and, hence, the new Saulkrasti Region does not meet the criteria for establishing regions set out for the purposes of the reform (*see vol. 2, pp. 105–106*). In the course of preparing the Case, the Ministry noted that linking Saulkrasti as an administrative centre with Skulte Municipality is reasonable both from a spatial point of view and taking into account preferences of the local residents, specifically the trend to choose work in the direction of Riga, as well as availability of services. The largest residential areas of Skulte Municipality are located in the vicinity of Saulkrasti (*see vol. 5, p. 98 of materials in the Case*).

The representative of *the Saeima* also noted at the court hearing that, in supporting the establishment of the Saulkrasti Region, MPs considered Saulkrasti as a prospective development centre in the Pierīga area and in the context of development the state as a whole, taking into account, among other aspects, socio-economic indicators and the dynamics of the population (*see the transcript of the court hearing of 20 January 2021 in vol. 17, pp. 45–46 of materials in the Case*). The representative of the Committee Juris Pūce noted at the court hearing that the Committee gave its support to the proposal for establishing the Saulkrasti Region taking into account, among other aspects, the fact that Saulkrasti and the surrounding territory is essentially a resort area, as well as the fact that the territory will have a better development potential as a new region rather than a separate administrative territory. Likewise, consideration was given to economic activity in

the Port of Skulte which requires a territory for development (*see the transcript of the court hearing of 20 January 2021 in vol. 17, p. 148 of materials in the Case*).

The territory of the Limbaži Region includes a regional or national development centre specified in 'Latvia 2030' strategy – Limbaži, whereas the town of Saulkrasti has not been defined as such a centre in the planning documents on national development. This means that the legislature, by separating Skulte Municipality off from the existing Limbaži Region and making it part of the new Saulkrasti Region, breached the criteria laid at the basis of the reform.

The criterion requiring that the territory of a region should include a regional or national development centre specified in the planning documents on national development is one of the most important criteria of the reform promoting sustainable and polycentric socio-economic development of the State. According to 'Latvia 2030' strategy, regional development centres are towns that are important cultural or manufacturing centres in the region with advanced social infrastructure and providing access to various services (*see paragraph 238 of the Strategy of sustainable development of Latvia by 2030*).

Arguments given at the Committee meetings and *the Saeima* sittings with regard to the development potential of the new Saulkrasti Region contained general considerations rather than specific research-based information justifying the decision to make Saulkrasti a regional development centre. Also in the course of hearing this Case, *the Saeima*, the Committee and the Ministry did not provide any specific studies or estimates that would give rational justification for the decision to consider Saulkrasti a potential regional development centre. Likewise, no rational justification was given for the decision to make Skulte Municipality part of the new Saulkrasti Region rather than keep it in the Limbaži Region, the administrative centre of which – Limbaži – is a recognised regional development centre, and it was not made clear how this decision would affect the Limbaži Region and its development.

The Constitutional Court does not assess development forecasts of any administrative territories, and in this Case it does not assess future prospects of a port or a resort. Proper justification for establishing a new regional development

centre should be provided by the legislature, which would also need to make respective amendments to the planning documents on national development. Therefore, by separating Skulte Municipality off from the administrative territory of the existing Limbaži Region without rational justification and making it part of the new Saulkrasti Region the legislature violated a criteria underlying the reform and thus violated the aim of the reform.

It follows that, in adopting sub-paragraph 35.4 of the Annex to the Law on Administrative Territories, the legislature acted arbitrarily.

28.2. The territory of the local government of the Ikšķile Region is established by paragraph 35 of Annex 2 to the Law on Administrative Territories and Populated Areas of 18 December 2008, pursuant to which the Ikšķile Region comprises the town of Ikšķile and Tīnūži Municipality. Pursuant to sub-paragraphs 28.2 and 28.19, the Ikšķile Region becomes part of the local government of the Ogre Region.

This administrative-territorial division is primarily justified by the fact that, in accordance with the planning documents on national development, the town of Ikšķile is not a regional development centre, whereas the town of Ogre has this status. Likewise, materials in the case emphasise geographic closeness of Ikšķile and Tīnūži Municipalities to Ogre, including the fact that Aizupes, which is part of Tīnūži Municipality, has in fact already become part of the town of Ogre, and the Ogre Technical School and Vidzeme Ice Hall, which are connected to the infrastructure of Ogre, are located in the administrative territory of the Ikšķile Region. Local residents of the Ikšķile Region already make active use of services funded by the Ogre Region, whereas the number of schoolchildren in the Ikšķile Secondary School in secondary education groups is not sufficient to maintain at least two parallel groups for each year. Furthermore, the nature park *Ogres Zilie kalni* is located in the territories of both local governments. Ikšķile and Ogre are connected by the national road A6 and efficient public transport network (*see vol. 5, pp. 17–18 and 97 of materials in the Case*).

In making the Ikšķile Region part of the local government of the Ogre Region the legislature complied with the criteria underlying the reform. The new

Ogre Region is geographically cohesive and its territory includes a regional development centre specified in 'Latvia 2030' strategy – Ogre. The legislature gave justification for economic sustainability of Ogre and, *inter alia*, gave consideration to provision of consistent and more efficient education services in the region.

In the course of preparing the reform and considering the Draft Law, the local government of the Ikšķile Region indicated that it preferred the Ikšķile Region to be preserved as an independent local government or to be merged with the Salaspils Region. The decision on whether the Ikšķile Region should be made part of the Salaspils Region or the Ogre Region, if in both cases the criteria at the basis of the reform are observed, depends on the political choices, which the Constitutional Court may not review. Conversely, retaining the Ikšķile Region as a separate administrative territory would not meet one of the criteria laid at the basis of the reform, namely, that a regional centre is also a regional or national development centre. The fact that the Ikšķile Region, owing to its financial situation, is able to function without financial aid from the fund for the equalisation of local government finances, as well as the prospects of becoming a development centre have no decisive legal significance, as the legislature did not define these factors as criteria for establishing regions.

It follows that, in deciding to make the existing Ikšķile Region part of the new Ogre Region, the legislature complied with the aim and the criteria of the reform.

29. Finally, with regard to merging the Ikšķile Region with the Ogre Region, the Court needs to establish if the legislature considered interests of the local community and advantages and disadvantages of the specific solution for administrative-territorial division.

The Ikšķile Regional Council argued that following the inclusion of the Ikšķile Region in the new Ogre Region local residents would no longer be able to efficiently participate in resolving matters pertaining to their region. A number of joined parties also gave their opinion with regard to the essence of democratic

participation of local residents in local government and possibilities of exercising this participation after the reform. For example, the representative of the Ministry Ilze Oša noted at the court hearing that the Draft Law on Local Governments contains numerous mechanisms that would allow local residents to participate in the work of local governments more actively (*see the transcript of the court hearing of 20 January 2021 in vol. 17, p. 119 of materials in the Case*). The representative of the Bank of Latvia Kārlis Vilerts stressed that in the course of the reform it is necessary, on the one hand, to seek balance between socio-economic and demographic considerations and, on the other hand, to ensure local democracy (*see the transcript of the court hearing of 20 January 2021 in vol. 18, p. 11 of materials in the Case*). Whereas Jānis Pleps emphasised that any political structure that involves democratic participation of citizens must ensure appropriate quality of this participation. The possibility of democratic participation must not be restricted for reasons of economic benefit. Likewise, situations where possibilities for the citizens to democratically influence decisions made by their local governments and where they feel that decision-making moves further away from them are not permissible (*see the transcript of the court hearing of 26 January 2021 in vol. 19, p. 67 of materials in the Case*).

The necessity to promote democratic processes in local governments and democratic participation of local residents and to strengthen their cultural and historical identity and belonging to the local community in the course of the reform was also emphasised by the State President in respective proposals for the Draft Law (*see pp. 9, 3 and 5 of the State President's Announcement of 24 March 2020, available at https://www.president.lv*).

The active participation of the residents in local self-government is important in a democratic rule-of-law state. A reform must not be based solely on economic considerations and financial gain. Therefore, the Constitutional Court needs to assess if the legislature, in implementing the reform, respected the right of residents to democratic participation.

29.1. One of the most important rights derived from the principle of democracy enshrined in Article 1 of the Constitution and from Article 101 of the

Constitution is the right of a citizen to participate in democratic processes and the possibility to influence decisions in matters that concern their life. The Constitutional Court has concluded that a democratic rule-of-law state must make sure that any of its residents be motivated to get involved in the life of the State and society (*see paragraph 11.1 of the Constitutional Court Judgment of 16 July 2020 in Case No 2019-25-03*). Participation of the public in making decisions ensures the legitimacy and efficiency of democracy (*see paragraph 7 of Conclusions in the Constitutional Court Judgment of 13 May 2005 in Case No 2004-18-0106*).

Democratic participation is a manifestation of the democratic will of citizens which facilitates, *inter alia*, the rule of law, democratic governance of the State, social inclusion and economic development, as well as observation of fundamental human rights. The right to democratic participation does not include only the active and passive election right of citizens and their right to participate in the work of the State and local governments. These rights are closely associated with such fundamental rights as the freedom of expression, assembly and association, the exercise of which is not affected by the reform.

With regard to local governments, the right to democratic participation also includes the possibility for a citizen to influence directly and without mediation decisions in matters of local importance and existence of a clearly defined mechanism of democratic participation. The reform results in decision-making in respect of the local community of each local government to be merged with other local governments moving further away from the community. For that reason, the legislature must make provisions for mechanisms allowing citizens to actively and comprehensively participate in the work of the local government and to effectively influence the making of decisions that affect the respective town or municipality.

29.2. Pursuant to the Transitional Provisions of the Law on Administrative Territories, *the Saeima* and the Cabinet must adopt numerous legal instruments in connection with implementing the reform. Among other tasks, sub-paragraph 2 of paragraph 11 of the Transitional Provisions of the Law on Administrative Territories requires that the Cabinet by 31 December 2020 prepare and submit for

consideration to *the Saeima* a draft law giving local communities (towns and municipalities) the right to elect their representatives in a democratic way and enabling the local communities to make decisions in local matters. The respective law has not yet been adopted. Therefore, since the reform is not yet completed, it is not possible to evaluate what the citizens' right to democratic participation will be in the local governments newly established as a result of the reform. At the moment, as concerns the local community of the Ikšķile Region, there is no reason to conclude that the legislature acted arbitrarily.

The responsibility for the comprehensive completion of the reform and its results falls primarily to *the Saeima* and the Cabinet. It is the responsibility of *the Saeima* and the Cabinet, *inter alia*, to ensure that the mechanisms for democratic participation of the residents set out in the Law on Administrative Territories are implemented in full.

It follows that, in adopting sub-paragraphs 28.2 and 28.19 of the Annex to the Law on Administrative Territories, the legislature did not act arbitrarily.

Substantive Part

Pursuant to Section 29(1)(6) and Sections 30–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To terminate the legal proceedings in the Case insofar as it concerns the compliance of sub-paragraphs 28.2, 28.19 and 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas with Article 4(3) of the European Charter of Local Self-Government.

2. To declare sub-paragraph 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to

the Law on Administrative Territories and Populated Areas compatible with Article 4(6) and Article 5 of the European Charter of Local Self-Government.

3. To declare sub-paragraph 35.4 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas incompatible with Articles 1 and 101 of the Constitution of the Republic of Latvia.

4. To declare sub-paragraphs 28.2 and 28.19 of Annex 'Administrative Territories, their Administrative Centres and Units of Territorial Division' to the Law on Administrative Territories and Populated Areas compatible with Articles 1 and 101 of the Constitution of the Republic of Latvia and with Article 4(6) and Article 5 of the European Charter of Local Self-Government.

The judgment is final and not subject to appeal.

The judgment was announced in Riga on 12 March 2021.

The judgment enters into force upon announcement.

Chairperson of the court hearing Aldis Laviņš