



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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**DISSENTING OPINION**  
**of Justice Gunārs Kušīņš**  
**in Riga, on 21 December 2020**  
**in the Case No. 2020-16-01**

**“On the compliance of Section 1, paragraph 2 of the Riga City Council Dismissal Law with Articles 1 and 101 of the *Satversme* of the Republic of Latvia”.**

1. On 3 December 2020, the Constitutional Court of Latvia passed a judgment in the case No. 2020-16-01 “On the compliance of Section 1, paragraph 2 of the Riga City Council Dismissal Law with Articles 1 and 101 of the *Satversme* of the Republic of Latvia” (hereinafter: “Judgment”), in which it found paragraph 2 of Section 1 of the Riga City Council Dismissal Law to be compatible with Articles 1 and 101 of the *Satversme* of the Republic of Latvia.

I agree with the conclusion of the Constitutional Court that even if the Constitutional Court declares the contested norm inconsistent with the *Satversme* and it loses its force, the legal consequences of the law would remain unchanged. I also agree that the law on dismissal of the local government council may be adopted only in the cases listed in the Law “On Local Governments”, based on specific facts and legal arguments (para. 21 of the Judgment), and I also agree with the conclusion of the Constitutional Court that the procedure for the dismissal of the local government council provided for in legal norms has been observed in the course of adoption of the contested norm (para. 23 of the Judgment).

However, I cannot agree with several conclusions and assessment contained in the Judgment regarding the conditions for the dismissal of the local government council

arising out of Section 91, paragraph 1, clause 1 of the Law “On Local Governments”. I will use the abbreviations used in the Judgment to substantiate my view.

2. The contested norm has been adopted with reference to Section 91, paragraph 1, clause 1 of the Law “On Local Governments”, which provides that a local government council may be dismissed if it repeatedly fails to comply with or violates the *Satversme*, laws, Cabinet of Ministers regulations, or court judgments.

The action of the *Saeima* in adopting the law on dismissal of the local government council is of a different nature than its activities in the traditional legislative process, because in adopting the law on dismissal of the local government council the *Saeima* actually acts as an enforcer of the law. If the *Saeima* establishes the conditions specified in Section 91, paragraph 1, clause 1 of the Law “On Local Governments”, it is entitled to adopt a law on dismissal of the local government council if such action is a necessary and proportionate means for restoring the legality of local government activities. Thus, the *Saeima* must establish specific facts and conduct a legal assessment that justifies the adoption of such a law.

The contested norm mentions the fact that the Riga City Council allowed illegal actions and did not perform the autonomous function of the local government provided for in the Waste Management Law, the Law “On Local Governments”, and other regulatory enactments, i.e., to organise the management of municipal waste, as the basis for its dismissal. Consequently, within the framework of the case adjudicated, the Constitutional Court had to assess, *inter alia*, whether the conditions referred to in paragraph 1 of Section 91 of the Law “On Local Governments” have been met.

3. The Constitutional Court has already indicated that the principle of a state under the rule of law gives rise to an obligation of the state to monitor how the local government observes its subordination to the law in its activities and, if necessary, to ensure that it is observed. The supervisory authority has the option of choosing the most appropriate means of control in the particular case. The dismissal of the local government council, which is a democratically elected representative institution, is a last resort that state institutions can use to monitor the legality of local government

activities (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-32-05, para. 14*).

The decision to dismiss the local government council on the basis of Section 91, paragraph 1, clause 1 of the Law “On Local Governments” must be aimed at restoring the rule of law in local government activities in order to prevent actions contrary to the *Satversme*, laws, Cabinet of Minister regulations, or court judgments. Taking into consideration that the dismissal of the local government council does not in itself restore the legality of the local government’s activities, it must also be clear from the justification for the adoption of such a law what violations exist in the local government’s activities. Such clarity enables the interim administration to take action to remedy this breach and thus restore the legitimacy of the local government’s actions.

4. In paragraph 22 of the Judgment, the Constitutional Court established the methodology for the assessment of the constitutionality of the contested norm. I consider that paragraphs 2 and 3 of the methodology established by the Constitutional Court do not contain several essential elements and do not reveal the entire set of conditions that must be assessed before a law on dismissal of the local government council can be adopted.

Both the *Saeima* and the local government council are institutions elected in democratic elections. In a democratic state governed by the rule of law, it is not acceptable for a democratically elected municipal council to be dismissed on political grounds. Dismissal of the local government council cannot be an end in itself, and the action of the *Saeima* in dismissing the local government council cannot be of a punitive nature. Namely, if violations have been established, but they have been eliminated by the time of the adoption of the law, then it cannot be considered that the conditions for dismissal of the municipal council included in Section 91, paragraph 1, clause 1 of the Law “On Local Governments” exist.

I believe that in paragraphs 2 and 3 of the methodology for the assessment of the constitutionality of the contested norm as determined by the Constitutional Court, it was necessary to ascertain whether:

(1) the local government council of the relevant convocation repeatedly commits a violation and at least one existing violation is also established at the time of adoption of the law;

(2) dismissal of the local government council is a necessary and proportionate means of controlling the activities of the local government in order to eliminate the presently existing violation.

5. Riga City Council had committed several violations. However, in assessing the circumstances of the particular case, I hold that before the adoption of the law in the final version, the only existing violation actually established by the responsible committee of the *Saeima* was failure to provide separate waste management services in accordance with the regulatory enactments (*see the audio recording of the meeting of the Budget and Finance (Tax) Committee of 14 January 2020*). At the same time, it was established at the meeting of the responsible commission of the *Saeima* that several other local governments do not provide shared waste management services (*see ibid.*).

Dismissal of the local government council is a last resort. In order to apply it, the *Saeima* had to legally assess whether in the particular situation there are no other solutions for the protection of the interests of the citizens of the local government and the whole society, and whether the respective action is proportionate to the established violation. In the Judgment, the Constitutional Court assessed whether in the particular circumstances the dismissal of the local government council as a means of control of the legality of local government activities was necessary in a democratic state governed by the rule of law, taking into account all violations committed by the local government council in their context (para. 25 of the Judgment). However, I believe that the Constitutional Court had to assess whether the dismissal of the local government council was a necessary and proportionate means of controlling the activities of the local government in order to prevent the presently existing violation. It does not follow from the audio recording of the responsible commission of the *Saeima* that such an assessment was made.

I believe that the dismissal of the Riga City Council was not a necessary and proportionate means of controlling the activities of the local government in the

particular situation, because the only existing violation actually established by the responsible commission of the *Saeima* did not cause such damage to the public interest as to require the application of this ultimate means.

Consequently, I consider that by adopting the contested norm, the *Saeima* has violated the principles of local government and the rule of law.

Justice of the Constitutional Court

Gunārs Kusiņš