



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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**DISSENTING OPINION**  
**of Justice Jānis Neimanis**  
**in Riga, on 18 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”.**

I do not agree with the conclusion of the Constitutional Court that the dismissal of the Riga City Council was legal and in accordance with the principle of local government.

The Constitutional Court has not independently examined the facts on which the dismissal was based.

The Constitutional Court has not assessed the proportionality of the dismissal of the local government council.

## I

Article 101 of the *Satversme*, stipulates, *inter alia*, that local governments are elected by full-fledged Latvian citizens and citizens of the European Union permanently residing in Latvia, and every citizen of the European Union permanently residing in Latvia has the right to participate in the work of the local government. The first sentence of Section 1 of the Republican City Council and County Council Election Law stipulates that the city council and county council of the Republic city shall be elected in equal, direct, and proportional elections by a secret ballot for four years. Thus, the local

government council is a constitutionally necessary and institutionally directly democratically legitimised body of state power.

The first part of Section 91 of the Law “On Local Governments” provides that *Saeima* has the right to dismiss the local government council if it:

- (1) repeatedly fails to comply with or violates the *Satversme*, laws, regulations of the Cabinet of Ministers, or fails to comply with court judgments;
- (2) repeatedly takes decisions and performs activities in matters which are within the competence of the *Saeima*, the Cabinet, ministries, other public administration institutions, or a court;
- (3) has not elected the chairman of the council, his or her deputy, or standing committees within two months after the meeting for the first sitting or after the resignation of the relevant officials or institutions;
- (4) is unable to take decisions due to the fact that more than half of the total number of deputies of the relevant council does not participate in three consecutive sittings.

As such, the *Saeima* may dismiss the local government council if:

- (1) it repeatedly fails to perform the obligations arising out of legal norms or court judgments, violates rights or its competence;
- (2) it is not serviceable.

With the *Saeima* law on dismissal of the local government council, the activities of the local government council are terminated prematurely. Termination of the activities of the local government council is an irreversible restriction of the will expressed by the citizens of a particular local government in local government elections and formulated as a result thereof; therefore, the actions of the *Saeima* in this case are subject to particularly careful scrutiny, all the more so because the draft law on dismissal of the local government council is submitted to the *Saeima* by the Cabinet of Ministers, but the *Saeima* may adopt the law by an absolute majority of the deputies present. Considering that the Cabinet of Ministers and the majority of the *Saeima* are formed by the position, but the majority of deputies representing the political party in the local government council may be in opposition to the parliament and government, it is

necessary to carefully consider whether other reasons are hidden behind the flag of the rule of law.

It should be noted that in the general case the legality of the activities of the municipal council is monitored and in case of violations the legality is restored by a number of state-established law protection and control institutions (various state services, councils, offices and, finally, the Office of the Prosecutor). Therefore, in the context of monitoring the performance of the duties of the local government council and the legality of its activities, the right of the *Saeima* to dismiss the local government council is to be considered a special and extraordinary measure, but in terms of legal consequences—the most severe of all means of supervision of the legality of local government activities.

The right of the *Saeima* to dismiss the local government council can be used only if the local government council permanently and for a prolonged period of time does not ensure the legality of its activities, such a situation affects a wide range of the residents of the municipality or the whole country, and it is impossible to effectively avert by other, general means of law protection and supervision.

## II

In the contested norm, the *Saeima* justified the dismissal of the Riga City Council on the grounds that the Council allows illegal actions and does not perform the autonomous function of the municipality specified in the Waste Management Law, the Law “On Local Governments” and other regulatory enactments, i.e., to organise the management of municipal waste. The annotation of the respective draft law reveals a more detailed justification of the allegation concerning the illegal actions of the Riga City Council and the non-performance of the said function.

The Constitutional Court did not verify whether the facts indicated in the annotation of the draft law prepared by the Cabinet of Ministers, which testify to the illegal actions

of the local government and the non-fulfillment of the function of management of municipal waste, are an accurate reflection and indeed such as to justify the dismissal of the council. In paragraphs 24.2. and 24.3. of the judgment, the Court has abstracted the information contained in the annotation of the draft law but has not itself ascertained the justification of the indicated facts and their connection with the non-performance of the function.

Paragraph 2 of Part I of the annotation refers to various letters in connection with the violations in the activities of the Riga City Council which may endanger the realisation of municipal functions. However, these arguments do not have a clear content—it is not clear what, when, and how was violated and what functions are threatened by it.

It is also indicated that the Riga City Council has violated the judgment of the Constitutional Court of 6 September 2012 in the case No. 2012-01-01, because it has not, by, at the latest, 1 July 2013, terminated the agreements with the municipal waste managers and has selected the managers according to a new procedure.

The annotation indicates that the Riga City Council Regulation No. 90 “Binding regulation for municipal waste management” of 17 December 2013 has not regulated the organisation of separate waste collection and the obligations of merchants and residents. Riga City Council fulfilled this obligation on 30 October 2019 by adopting a binding regulation (it seems that this is the Riga City Council binding regulation No. 87 “On municipal waste management in the city of Riga” of 29 November 2019), the operation of certain points of which has been suspended by the Ministry of Environmental Protection and Regional Development. Riga City Council has not fully complied with the Cabinet of Ministers Regulation No. 328 of 3 June 2017 requirement of the provision and availability of a separate waste management service throughout the city.

Riga City Council has announced a private–public partnership tender for the entire territory of Riga, although the binding regulations divide waste management into zones. Riga City Council has concluded a concession agreement, by which it has restricted

competition in the municipal waste management market for 20 years. Riga City Council has not properly informed the residents about the waste manager. After the suspension of the concession agreement, the Riga City Council did not take any action to stop the anthropogenic catastrophe, and it was necessary for the Cabinet of Ministers to declare a state of emergency. Riga City Council has not ensured that a long-term solution for waste management in Riga after the expiration of the state of emergency is found.

Thus, in general, three main arguments were put forward:

- (1) previously concluded agreements on waste management have not been terminated and new agreements have not been concluded in a new procedure;
- (2) not all requirements regarding the provision and availability of the separate waste management service have been fully complied with;
- (3) due to waste management in Riga, a state of emergency had to be declared, as the performance of the waste management function had been endangered.

According to Section 15, paragraph 1, clause 1 of the Law “On Local Governments”, the autonomous function of a local government is to organise public services for the population, including management of municipal waste. According to the Law on Waste Management, waste management is the collection, storage, transport, recovery, and disposal of waste (including incineration in municipal waste incineration plants), supervision of these activities, after-care of waste disposal sites, as well as waste trade and waste management intermediation.

According to the Waste Management Law (Sections 8, 10, 18, 21, 39, etc.), within the competence of the local government is:

- (1) to organise waste management in the territory of the local government, including to take decisions regarding the location of landfills in its administrative territory;
- (2) to issue binding regulations regarding municipal waste management in the administrative territory of the local government and to determine requirements for waste management: collection, its frequency, transportation, reloading, sorting and storage, to set fees for waste management, to determine municipally authorised

institutions and officials who control compliance with binding regulations and are entitled to draw up an administrative violation report;

(3) to organise separate collection of waste in the territory of the local government;

(4) to participate in the development of regional waste management plans; if necessary, to develop a municipal waste management plan for the territory of the local government;

(5) to select a waste manager who will collect, transport, and store waste in the administrative territory, enter into an agreement therewith;

(6) enter into an agreement with the landfill operator.

In Riga, a landfill “Getliņi” has been established. On 17 December 2013, the Riga City Council issued binding regulation No. 90 “Binding regulation for municipal waste management”. This regulation was agreed upon with the Ministry of Environmental Protection and Regional Development. It is on the basis of this regulation that municipal waste was managed in the city of Riga.

The Riga City Council organised the collection and transportation of municipal waste, including unsorted and separated waste, in the administrative territory of the city of Riga by concluding agreements with waste managers SIA “Clean R”, SIA “Pilsētvides serviss”, SIA “Lautus”, and SIA “Eco Baltia vide”. It is true that these agreements were not terminated in 2013 and their operation was continued, but during all these years up until 2019, no legal action was brought against the Riga City Council due to this. Nor did the Competition Council in its 2016 monitoring report on the market of municipal waste management make any comments that this would significantly distort free competition. If the Riga City Council can be dismissed for the fact that the term of the procurement contract concluded by it is excessively long, then Jelgava City Council should also be dismissed on the same basis. However, this did and does not happen, because it depends on the political situation, which also explains why the Ministry of Environmental Protection and Regional Development addresses one municipal council with special intensity, but not the others. It should be noted that also the supervisors of the rule of law, namely the Office of the Prosecutor, have never acted to put a stop to

non-compliance with the law in connection with the management of municipal waste in Riga in this respect.

Separate collection of waste in Riga took place by agreement of the waste manager with the client, as well as in special areas and containers; however, as indicated in the annotation, insufficiently so. It should be noted that separate waste collection and treatment is a problem throughout Latvia; it is promoted by additional funding from the European Union Cohesion Fund and is an issue not only in one municipality alone. If this is the basis for dismissal of the local government council, then it is necessary to ask why other local government councils have not been dismissed.

Finally, the argument concerning the performance of the hazardous waste management function and the state of emergency. On 14 June 2019, the Riga City Council entered into a concession agreement “On the implementation of the municipal waste management system of the city of Riga”. However, by the decision of the Competition Council of 9 September 2019, the Riga City Council was required to suspend the execution of the concession agreement. This decision determined the further performance of the waste management function. Paragraph 3 of the decision of the Competition Council stipulates that the Riga City Council must revoke the notices of waste management agreements that were sent to waste managers with whom there were valid waste management agreements before concluding the concession agreement. If the cancellation of previous agreements is immediately revocable, it means that the previously concluded waste management agreements are renewed. Thus, the performance of the municipal function was not suspended.

One can only guess for what interests were the members of the Cabinet of Ministers deceived, indicating to them that due to the decision of the Competition Council the collection and removal of municipal waste in the administrative territory of the city of Riga is endangered. The Minister of Environmental Protection and Regional Development specifically insisted on this at the sitting of the Cabinet of Ministers, and the ministry headed by him prepared a draft order of the Cabinet of Ministers to declare

a state of emergency (and later extend it) and, finally, to dismiss the Riga City Council. At the sitting of the Cabinet of Ministers, the view expressed by the Competition Council regarding the legal consequences of its decision regarding waste management in Riga was not observed. Thus, the declaration of a state of emergency was only a well-prepared pretext to give the impression that municipal waste management is in a crisis and waste will start to accumulate on the streets of Riga.

The activities of the Riga City Council in connection with the organisation of private and public partnerships were inspected and the transfer of municipal waste management to a concession for 20 years to one waste manager was already prevented by the Competition Council's decision on interim measures, so in this aspect, too, the Riga City Council was not dismissable.

Finally, it is undeniable that various violations of the law can be found in the activities of each local government council; however, extremely rarely would they be such that the work of the council should be terminated.

In the present case, there is no dispute concerning the fact that waste management actually functioned in the Riga municipality: the waste managers appointed by the municipality ensured the collection of municipal waste and the delivery of unsorted waste to the Riga city landfill. In co-operation with waste managers the Riga City Council had also provided the possibility of separate collection of sorted municipal waste in the territory of the city of Riga.

### **III**

In determining whether the restriction of fundamental rights contained in the contested norms is proportionate, the Constitutional Court assesses whether the restriction is appropriate for the achievement of a legitimate aim, whether the aim cannot be achieved by other means less restrictive of an individual's fundamental rights, and whether the benefit to society outweighs the harm to the individual.

The same test of the principle of proportionality is applicable to test the restriction of the competence/rights of the local government.

As I indicated above, the waste management function was performed by the council. There has never been and at the time of the issuance of the law in Riga there was no threat of an anthropogenic catastrophe due to municipal waste management. The violations of legal norms indicated to the Riga City Council had been eliminated, or their elimination had been initiated. Some violations of legal norms were insignificant.

In these circumstances, I cannot acknowledge that the dismissal of the local government council was a necessary and proportionate means of resolving the situation. The assessment provided by the Constitutional Court is one-sided. The Court did not even examine whether the alleged violations of the local government council, if any, had already been remedied or could have been remedied by other means at the disposal of the state.

Justice

J. Neimanis