



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 17 December 2019

in Case No. 2019-03-01

The Constitutional Court, comprised of: chairperson of the court hearing Ineta Ziemele, Judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

having regard to the application by Aivars Damroze,

on the basis of Article 85 of the Constitution of the Republic of Latvia, Para 1 of Section 16, Para 11 of Section 17 (1), Section 19² and Section 28¹ of Constitutional Court Law,

at the court hearing of 20 November 2019 examined in written proceedings the case

“On Compliance of Para 4 of Section 38 (2) of the Law “On Local Governments” with the First Sentence of the Constitution of the Republic of Latvia”.

The Facts

1. Para 4 of Section 38 (2) of the law “On Local Governments” (hereafter – the contested provision) provides: in addition to the restrictions on combining offices set out in the law "On Prevention of Conflict of Interest in the Activities of Public Officials", a member of the municipal council may not hold the office of the head or deputy head of the relevant local government institution, except in an

institution that performs the autonomous functions of the local government, set out in Paragraphs 4, 5 and 6 of Section 15 (1) of this law.

2. The applicant – Aivars Damroze (hereafter – the Applicant) – holds that the contested provision, insofar it prevents from combining the councillor’s mandate with heading of an institution, which performs the autonomous functions of a municipality determined in Para 17 of Section 15 (1) of the law “On Local Governments”, is in violation of the first sentence of Article 91 of the Constitution of the Republic of Latvia (hereafter – the Constitution).

The Applicant points out that he had been the councillor of Rauna Regional Council and the director of the Gatarta nursing home and because of this had been administratively sanctioned for violating restrictions on combining offices in accordance with Section 166³⁰ of Latvian Administration Violations Code.

The Applicant points out that the prohibition of combining offices, which follows from the contested provision, causes differential treatment of persons who head institutions of education, sports, health care and culture and persons who head other institutions that perform the autonomous functions of a local government. Allegedly, the substantiation of this differential treatment is not publicly accessible and it had not been discussed in the legislative process. The regulation on preventing conflict of interest in general is said to ensure that public officials act in the interests of society; however, the particular restriction is lacking a legitimate aim. It is not clear why different regulation has been established with respect to institutions that perform the functions of sports, culture, education or health care, i.e., it has not been proven that the risk of conflict of interest related to heading these institutions would be lower than the one related to heading other institutions. The daily management processes in an institution, which performs social functions, is said to be similar both as to its nature and its scope. The aim of the institution is not to make a profit but to satisfy society’s needs.

After familiarising himself with materials in the case, the Applicant notes, additionally, that the need to improve regulation on preventing the conflict of interest cannot justify the incompatibility of the contested provision with the first sentence of Article 91 of the Constitution. Likewise, in reviewing the compatibility

of the contested provision with Article 91 of the Constitution, the creation of larger regions could not be deemed to be a solution.

3. The institution, which issued the contested provision, the *Saeima*, holds that the contested provision complies with the first sentence of Article 91 of the Constitution.

The *Saeima* points out that the contested provision envisages differential treatment of councillors, who head a local government institution that performs the function of social assistance, and councillors, who head institutions envisaged in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”. At the time when the contested provision was adopted, extended discussions had taken place in the Public Administration and Local Government Committee of the *Saeima* and in the working group regarding the content of this provision and the necessary restrictions on combining offices. Moreover, the Committee returned to this matter following the Ombudsman’s opinion in inspection case No. 2013-142-26K. However, members of the Committee had not reached an agreement on amending the provision.

The restriction had been established to protect the democratic State order and ensure that the heads of local government institutions were politically neutral in the performance of their duties. The other local government institutions are subordinated to the local government council but this relationship of subordination could not be implemented effectively if the councillors would be at the same time also the heads of institutions. Allegedly, the restriction is aimed at preventing conflict of interest, more effective supervision of a local government and implementing the principle of good governance.

Exemptions to restrictions on combining offices had been set out in the contested provision, taking into consideration the need to ensure effective functioning of a local government, in particular, the local governments with small population. In choosing the institutions, to which exemptions to the restriction on combining offices would be applied, it was taken into account that the functions envisaged in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”, were directed at all inhabitants of the local government, whereas

the function of social assistance was target at socially less protected members of society, moreover, affecting them directly and individually. A similar restriction has been established also in Section 15 of Law on Orphan's and Custody Courts.

The restrictions on combining offices, chosen by the legislator, are said to be suitable for reaching the legitimate aim, moreover, there are no less restrictive measures that would allow reaching the legitimate aim in equal quality. Effective supervision and control of the functioning of institutions that implement the social assistance function of a local government is facilitated. Extending the exemptions to the social function would also subject the performance of this function to the risk of conflict of interest. Revoking of the exemptions could, in turn, jeopardise the ability to ensure that the interests of the residents of the local government are represented in the council. It is contended that the State has broad discretion in imposing restrictions on public officials in relation to combining offices within the public administration.

At the time of standing for local government elections, the conditions for combining the said offices are known to the person, and they may plan their actions. Moreover, the contested provision does not deprive a person of the right to work in public administration but restricts, in public interests, the possibility to hold, within the executive power, offices that are in a relationship of mutual subordination. Hence, the society's benefit from the restriction, established in the contested provision, is said to outweigh the damage inflicted upon an individual's rights and lawful interests.

4. The summoned person – the Ministry of Justice – holds that the contested provision is incompatible with the first sentence of Article 91 of the Constitution.

The Ministry of Justice is of the opinion that persons who are councillors and, at the same time, head a local government institution, which performs one of the autonomous functions of a local government, are in similar and in accordance with certain criteria comparable circumstances. The contested provision envisages differential treatment of those councillors who head a local government institution,

which is responsible for performing the functions set out in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”.

The alleged aim of the contested provision is preventing conflict of interest in the activities of public officials. It is suitable for reaching this legitimate aim as it ensures that councillors of a local government council – members of a decision-making institution – at the same time do not ensure the administrative management of local government institutions. However, it would be possible to reach this legitimate aim by more lenient measures. I.e., also those councillors of a local government council who head an institution, which performs the function referred to in Para 7 of Section 15 (1) of the law “On Local Governments”, could be allowed to combine offices because no objective difference from the already valid exemptions can be discerned with respect to risks of conflict of interest.

It should be clearly understandable why exemptions to restrictions on combining offices have been determined at all. If, essentially, it is in public interests to prevent that one person holds two offices that are in relations of mutual subordination within executive power then such prohibition should be applied to any person. If the same person heads any of the local government institutions and, simultaneously, is also a councillor of a local government council then a potential risk of conflict of interests exists and it would not be correct to divide it into risks that are easier and more difficult to manage. For example, a head of an institution of education, simultaneously being also a councillor of a local government, could directly or indirectly facilitate the renovation of the buildings of the institution of education, managed by this person, or participation in competitions for the European Union structural funds. In such cases, the risk of conflict of interest could be higher compared to instances when an individual decision on granting social assistance is made with respect to a socially vulnerable person. Likewise, the argument regarding the lack of human recourses in smaller local governments is said to be unsubstantiated, insofar ungrounded differential treatment of persons who are in similar and comparable circumstances follows from it.

In view of the purpose of the law “On Prevention of Conflict of Interest in Activities of Public Officials”, it should be examined whether combining the office

of a councillor of a local government council with the office of the head or the deputy-head of any local government institution is compatible with this purpose.

5. The summoned person – the Ministry of Environmental Protection and Regional Development – holds that the contested provision is compatible with the first sentence of Article 91 of the Constitution.

The Ministry subscribes to the opinion expressed in the *Saeima's* written reply that the application of the exemptions, included in the contested provision, to the heads of the institutions performing the local government's function of social assistance would subject the performance of this function to the risk of conflict of interest. The heads of institutions that perform the function of social assistance, allegedly, can adopt decisions that individually affect the rights and interests of socially more vulnerable residents. Therefore, it is essential to ensure effective oversight of the performance of the function of social assistance and this, in turn, includes separation between the administrative management of the respective institutions and the supervisory institutions. Moreover, the contested provision is said to ensure that also other public interests are respected. As highly qualified personnel as possible is ensured to the councils of local governments with smaller population if only such heads of local government institutions are active therein whose inherent conflict of interest risks are considered by the legislator to be more manageable.

6. The summoned person – the Corruption Prevention and Combatting Bureau – holds that the contested provision complies with Article 91 of the Constitution.

Differential treatment of the heads of those institutions that perform the autonomous function of a local government, defined in Para 7 of Section 15 (1) of the law "On Local Governments", compared to the heads of those institutions that perform the autonomous functions set out in Paras 4, 5 and 6 of this Section, is envisaged in the contested provision.

The contested provision had been adopted in accordance with the procedure defined in regulatory enactments and it had been repeatedly considered and

discussed in the stages of progressing with the draft amendments. The legitimate aim of the contested provision is to ensure separation of a local government's decision-making power from the executive power in the area of social assistance.

The restriction, established in the contested provision, is not absolute and does not exclude totally the possibilities of local government councillors to hold offices in the administration of a local government, local government institutions and capital companies. The exemptions had been introduced to ensure the necessary human resources in smaller local governments. These restrictions are said to be proportional, exhaustive and cannot be interpreted broadly because they ensure separation between the executive power and the decision-making power and, hence, implement an effective and transparent model of administration. The benefit gained by society outweighs the restrictions imposed on the Applicant.

7. The summoned person – the Ombudsman – holds that the contested provision is incompatible with Article 91 of the Constitution.

The Ombudsman points out that the contested provision applies to persons who are in similar and comparable circumstances, i.e., councillors of a local government who head local government institutions that perform the autonomous functions of a local government. Allegedly, the restriction on combining offices, established in the contested provision, causes differential treatment of comparable groups of persons.

The legitimate aim of the contested provision is to promote lawful decision-making, prevent conflict of interest and ensure effective supervision of local government institutions. However, the differential treatment has no objective and reasonable grounds since the principles of operation and subordination of the heads of various local government institutions actually do not differ.

8. The summoned person – the Latvian Association of Local Governments – holds that the contested provision is incompatible with the first sentence of Article 91 of the Constitution.

The Latvian Association of Local Governments had participated in the discussions regarding the contested provision. The restrictions on combining

offices had been included in the law “On Local Governments” in order to separate, to the extent possible, the local government’s decision-making power from its executive power, thus preventing conflict of interest in the activities of public officials.

However, the Association of Local Governments is of the opinion that this aim could be reached by more lenient measures, already defined in the law “On Prevention of Conflict of Interest in Activities of Public Officials”, i.e., by defining how any public official should act in order not to come in a situation of conflict of interest. Moreover, the aims of separation between the decision-making power and the executive power in a local government differ from the ones in central administration. The central government can supervise the lawfulness of local governments’ activities and private persons can defend their rights in the administrative procedure. Hence, mutual surveillance, where the executive power of the local government controls the councillors and *vice versa*, is not mandatory.

The Association of Local Governments recognises the possibility that work within the framework of a local government’s executive power is an obstacle for taking balanced decisions, evaluating the commensurability of the opinions of various sectors and interest groups with the shared interests of the residents of the territory. However, the councillors, having good knowledge of their sector, have better understanding of the matters they vote on. Thus, the concentration of power in the hands of the council’s chairperson decreases. Every politician who makes decisions in an environment of different interests sometimes comes in a situation of conflict of interest, calling for ethical actions and taking of the most efficient decision. A decision on decreasing the number of restrictions established for the officials of local governments should be made.

At the time when the contested provision was discussed, it had been taken into consideration that establishing restrictions on combining offices could indirectly affect the willingness of many competent persons to work at the local government. It is essential that a local government councillor is not in legal employment relations. The monthly salary of the local government councillors has been defined in law, however, for the majority of local government councillors the main job is elsewhere, not at the local government’s council.

The restrictions on combining offices could infringe upon the inhabitants' passive election rights. To resolve this problem, the restrictions on combining offices should be revoked and the idea of introducing full working time for local government councillors could be discussed.

9. The summoned person – Valts Kalniņš, associate researcher at PROVIDUS, notes that restrictions on combining offices are to be considered a preventive measure for decreasing the most dangerous risks of conflict of interest. Pursuant to the Model Code of Conduct for the Officials of the Council of Europe (*see: Annex to Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on codes of conduct for public officials*), a public official may not take any office that is incompatible with proper performance of their duties of a public official or hinders performance of these duties. Similar admissibility criteria for combining offices, *inter alia*, such a criterion as compliance with ethical norms, have been defined also in Section 6 (1) of the law “On Prevention of Conflict of Interest in Activities of Public Officials”.

A councillor of a local government council, being a member of the council, participates in making such decisions that pertain to local government institutions, e.g., by voting on the local government's budget, reorganisation of local government institutions, determining the remuneration for the heads of institutions or other officials of a local government and employees of institutions. In such cases, the probability is quite high that the councillor's, as the head of local government institution, decision will be influenced by his personal or pecuniary interests.

In a situation like that, one of the solutions to this possible situation of conflict of interest is that the councillor does not participate in the drafting and adoption of the respective council's decisions. However, the legislator has not envisaged the duty for such a councillor's to abstain in cases where external regulatory acts or political decisions are adopted. Moreover, in many local governments the number of councillors is already small and non-involvement of councillors in the adoption of council's decisions might have a negative impact on the legitimacy of these decisions and hinder the council's work.

The second solution is prohibition for a local government councillor to hold other offices, with respect to which it is known that, most probably, combining of offices will cause conflicts of interest. This is the approach, currently included in law.

As regards the matter of whether the restrictions, established in the contested provision, are substantiated, V. Kalniņš subscribes to the arguments included in the *Saeima's* written response and notes additionally that it should be ensured that legal provisions would not unreasonably weaken the ethical standards set in particular professions, fields or sectors by the representatives thereof themselves. In smaller local governments, restrictions on combining offices with broad scope could make it difficult to attract sufficient number of persons with appropriate qualifications for all offices in the local government. Therefore, establishing larger local governments could be worth it.

Although the office of a head of an institution, as to its nature, differs from the restrictions, defined in the law “On Prevention of Conflict of Interest in Activities of Public Officials” with respect to the position of a pedagogue, scientist, doctor or a professional athlete or creative work, apparently, the legislator sees lesser risk of conflict of interest in these areas and, allegedly, this testifies to certain consistency in the legislator’s approach.

The Findings

10. The applicant holds that the contested provision is incompatible with the first sentence of Article 91 of the Constitution, insofar it determines unfounded differential treatment of the councillors who head an institution that performs a local government function, envisaged in Para 7 of Section 15 (1) of the law “On Local Governments”.

The Applicant had been the head of a social care institution and was elected councillor of the local government council but later was punished administratively for violating the restriction on combining offices, set out in the contested provision. He is of the opinion that the contested provision envisages unfounded differential

treatment of heads of social institutions, prohibiting them from combining the respective office with performance of the obligations of a local government councillor. Hence, the Applicant holds that the contested provision infringes upon the first sentence of Article 91 of the Constitution.

The first sentence of Article 91 of the Constitution provides: “All human beings in Latvia shall be equal before the laws and the courts.” It includes the equality principle that guarantees existence of a united legal order. Its objective is to ensure that such requirement of a State governed by the rule of law as comprehensive effect of law on all persons is met and law is applied without any privileges (*see Judgement by the Constitutional Court of 7 November 2019 in Case No. 2018-25-01, Para 16*). The equality principle prohibits State institutions from issuing such provisions, which, without reasonable grounds, allow differential treatment of persons who are in similar and according to certain criteria comparable circumstances. This principle permits and even requires differential treatment of persons who are in different circumstances, as well as permits differential treatment of persons who are in similar circumstances if there are objective and reasonable grounds for it (*see, for example, Judgement by the Constitutional Court of 11 October 2017 in Case No. 2017-10-01, Para 18*). Differential treatment lacks objective and reasonable grounds if it does not have a legitimate aim or if the relationship between the chosen measures and the aims set are no proportionate (*see, for example, Judgement by the Constitutional Court of 19 June 2018 in Case No. 2017-25-01, Para 25*).

The Constitutional Court has recognised that the legislator’s discretion differs with respect to various legal matters. This finding by the Court is applicable also to the review of the compatibility of a legal provision with the equality principle (*compare, see, for example, Judgement by the Constitutional Court of 11 November 2005 in Case No. 2005-08-01, Para 5*). Therefore, in assessing the compatibility of a legal provision with Article 91 of the Constitution, the legal relationship that this provision regulates must be taken into consideration.

11. The subject that the contested provision regulates is the restrictions on combining offices that apply to public officials. These have been established in

the law “On Local Governments”, in addition to the restrictions already envisaged in the law “On Prevention of Conflict of Interest in Activities of Public Officials”.

11.1. In the meaning of this regulation, public officials are persons who perform a public function. Alongside the direct administration, the indirect administration – local governments and the institutions established by them – organisationally belong to the single system of public administration. A councillor of a local government holds a public law office. Performance of the official duties of a councillor and exercising the rights means exercising public power for society’s benefit (*see Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-32-05, Paras12 and 19*).

The status of a public official means that special legal relationship exists between the person and the State and it is closely linked to the performance of the State’s functions. The requirement regarding special trustworthiness and loyalty towards the State is the basis for the restrictions, linked to the status of a public official, which *per se* cannot be regarded and incompatible with the equality principle (*compare, see Judgement by the Constitutional Court of 23 November 2015 in case No. 2015-10-01, Para 17.2.*).

The necessity to ensure effective control between the offices that perform the functions of the decision-making power and the executive power follows from the principle of separation of power. Whereas the principle of good governance specifies the conditions for the activities of public officials in public administration. The principle of good governance demands employing in public administration personnel that is honest, competent and motivated. In accordance with the principle of good governance, the State has the obligation to improve the procedure of administration and organise it as effectively as possible (*see Judgement by the Constitutional Court of 19 April 2010 in Case No. 2009-77-01, Para 31*). It includes also prevention of conflict of interest in the activities of public officials. Pursuant to Section 10 (4) of State Administration Structure Law, in implementing the functions of State administration, the State administration, individual institutions or offices do not have their own interests. The purpose of the State administration is to ensure protection for the values enshrined in the Constitution.

11.2. The contested provision has been adopted to fulfil the obligation, which follows from the principle of good governance, to prevent conflict of interest in the activities of public officials. The regulation on preventing conflict of interest aims to ensure that all public officials act in public interests, preventing the influence of personal or pecuniary interests of a public official, his relatives or business partners on the activities of a public official, as well as promoting the transparency and accountability of public officials to the public and public trust in the activities of public officials (*see Judgement by the Constitutional Court of 23 November 2015 in Case No. 2015-10-01, Para 17.2.*). The Saeima notes that the aim of the contested provision is to protect the democratic State order and ensure that the heads of local government institutions are neutral in performing their duties. The contested provision has been adopted to ensure that public officials act in public interests, preventing the influence of any personal or pecuniary interests of a public official, his relatives or business partners on the activities of a public official, as well as promoting the transparency and accountability of public officials to the public and public trust in the activities of public officials. Likewise, the summoned person, Corruption Prevention and Combatting Bureau, notes: if the decision-making power is not effectively separated from the executive power, risks of conflict of interest arise (*see Case Materials, Vol. 2, pp. 94–95*). For example, the council decides on the statute of the local government, approves of the local government budget, amendments to it and reports on fulfilment of the budget, establishes, reorganises and liquidates local government institutions, as well as appoints to the office and dismisses the heads of local government institutions (*see Section 21 of the law “On Local Governments”*).

The Constitutional Court concludes that the aim of the restrictions on combining offices, included in the contested provision, is to ensure that a person, in a local government, does not hold simultaneously such offices that are in the relationship of subordination. I.e., a local government council has the task to supervise the work of local government institutions but, if a councillor of a local government council at the same time is also the head of a local government institution, it might directly affect the performance of this supervision because the

councillors of a local government council adopt decisions that affect directly the institutions subordinated to the council.

11.3. To manage effectively the possible conflicts of interest in the activities of public officials, restrictions on combining offices have been established. However, the principle of incompatibility of public offices allows envisaging exemptions, in the setting of which the legislator has certain discretion. The legislator, in determining the activities of public officials, must act within the framework of the basic norm of a democratic State, governed by the rule of law. Hence, the legislator's discretion can be exercised within the framework of general legal principles.

It follows from the OECD Guidelines for Managing Conflict of Interest in Public Service that, in practice, some situations of conflict of interest are unavoidable, however, such situations and activities, which are incompatible with the holding of a public office, must be clearly defined (*compare, see: Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service*). The summoned person V. Kalniņš also points out that the restrictions on combining offices and other restrictions, aimed at preventing conflict of interest, cannot be as nuanced and comprehensive as to prevent absolutely all risks, and the legislator, taking into account an objective need, may establish certain exemptions, although it is possible that a risk of conflict of interest will remain (*see Case Materials, Vol. 2, p. 107*).

According to the contested provision, in addition to restrictions on combining offices, set out in the law "On Prevention of Conflict of Interest in Activities of Public Officials", the legislator has determined restrictions, which prohibit combining the office of a councillor of a local government and the office of the head of a local government institution. *Inter alia*, a councillor of the council may not hold the office of the head of an institution, which performs the autonomous function of a local government, defined in Para 7 of Section 15 (1) of the law "On Local Governments", – to ensure social assistance (social care) to residents. However, the legislator has envisaged also exemptions from this restriction, providing that a councillor of a local government council may hold the office of the head in an institution, which performs the autonomous functions of

local governments, defined in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”, i.e., the following functions: to provide for the education of residents, to maintain culture and facilitate the preservation of traditional cultural values and the development of creative folk activity, to ensure access to health care, as well as to promote a healthy lifestyle of residents and sport.

The Applicant objects to the fact that the contested provision prohibits from combining the office of a councillor with the offices of the head of such local government institutions, which perform the autonomous functions of a local government, referred to in Para 7 of Section 15 (1) of the law “On Local Governments”. Since the contested provision permits combining of offices with respect to the heads of such institutions, which perform the autonomous functions of a local government, referred to in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”, the Applicant points out that differential treatment of both comparable groups of councillors has been established without grounds.

The Applicant had been employed in public administration, i.e., had been the head of a social care institution. He wishes to combine this office with performing the duties of a councillor of the regional council. However, a person’s right to demand to be allowed to hold several positions with the public administration simultaneously follows neither from the Constitution, nor other national or international legal provisions binding upon Latvia. The Applicant requests applying to him the exemption, which the legislator has established within the public administration.

The legislator has not only the discretion but also the obligation to organise the work of public administration, abiding by the values, included in the Constitution, the principle of separation of powers and the principle of good governance. In the context of the equality principle, in determining the limits of the legislator’s discretion in organising the public administration, it must be assessed whether the legislator has not acted arbitrarily. To verify this, the Constitutional Court will assess whether the contested provision has objective grounds, i.e., whether the contested provision has a legitimate aim, whether the contested provision has been adopted in compliance with the principle of good legislative procedure, and whether it has been chosen on the basis of objective

criteria, whether the contested provision reaches the legitimate aim and is not manifestly disproportionate.

12. The *Saeima* points out that the legislator had chosen to introduce exemptions to the restriction on combining offices to increase the circle of persons who could perform the obligations of a local government councillor. Thus, the legislator had wished to make the work of local governments more effective because, in local governments with small population, extensive restrictions on combining offices could cause difficulties in attracting persons with appropriate qualifications to local government offices. I.e., restrictions on combining offices might deter persons from standing for elections if they were prohibited from continuing their previous occupation (*see also Audio recordings of the meeting of the Public Administration and Local Self-Government Committee on 4, 5 and 6 December 2012, Volume 2.*).

The Constitutional Court concludes that, from the perspective of effective functioning of local governments and the quality of adopted decisions, it is important that the circle of persons running for election would be sufficiently broad. Whereas too extensive restrictions on combining offices could deny the possibility for local governments with small population to attract for working in the council persons with appropriate qualifications, thus, it might be necessary to envisage restrictions that would allow a local government councillor to combine this office with other offices in local government institutions.

Hence, the legitimate aim of the contested provision is protection of a democratic State order, facilitating more effective work of a local government and more extensive and inclusive democratic representation in local governments, at the same time preventing conflicts of interest in the activities of local government officials.

13. The Constitutional Court must verify whether the contested provision has been adopted in compliance with the principle of good legislative procedure and had been chosen on the basis of objective criteria.

The principle of good legislative procedure does not guarantee the desirable result to one person or a group of persons; however, compliance with it provides certainty to everyone that the respective matter has been discussed democratically, i.e., different opinions have been expressed and analysed and the best possible balance between various conflicting rights and interests had been sought, abiding by the values, included in the Constitution, and general legal principles (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.1.*).

The contested provision was adopted by the law of 31 January 2013 “Amendments to the Law “On Local Governments””. Following the first reading of the draft law, the Minister for Environment Protection and Regional Development offered to amend the law “On Local Governments”, envisaging restrictions that would prohibit combining the office of a councillor and the office of the head and deputy-head of an institution. The proposed amendments were discussed at the Public Administration and Local Government Committee of the Saeima (*see, for example, Minutes of the Meeting of the Public Administration and Local Government Committee of 4 December 2012, Case Materials, Volume 1, pp. 109-110, Minutes of the Meeting of 5 December 2012, Case Materials, Volume 1, p. 113-114, . Minutes of the Meeting of 6 December 2012, Case Materials, Volume 1, p. 117*). Several models for restricting combining of offices had been discussed by the Committee. For example, the Minister for Environment Protection and Regional Development proposed envisaging different restrictions for local government councillors depending on the size of the local government) (*see The audio recording of the meeting of the Public Administration and Local Government Committee of 4 December 2012 and the draft law prepared for the second reading by the Public Administration and Local Government Committee for the meeting of 4 December 2012, Case Materials, Volume 2, pp. 1–4*). The working group, in turn, discussed proposals that envisaged differentiating restrictions, depending on the functions of the institution. The proposal offered by deputy Raimonds Vējonis envisaged that combining of offices was admissible also for the heads of such institutions, which perform the functions, defined in Para 7 of Section 15 (1) of the law “On Local Governments”; however, this proposal did

not gain support because these institutions were said to “affect”, in particular, socially vulnerable groups (*see the audio recording of the sittings of the Public Administration and Local Government Committee on 4, 5 and 6 December 2012 and 22 January 2013 in Case Materials*).

Likewise, the proposal that did not envisage any exemptions to the restriction on combining offices did not gain support, as this would hinder the work of local governments with smaller population (*see the audio recording of the sittings of the Public Administration and Local Government Committee on 4, 5 and 6 December 2012 and 22 January 2013 in Case Materials*). The *Saeima* adopted the valid wording, taking into consideration the interests of local government with small population, because the institutions, performing the autonomous functions of a local government, referred to in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”, are found, predominantly, in these small local governments (*see Written reply by Saeima in Case Materials, Vol. 1, pp. 80–86*).

The *Saeima* has considered the issues of improving the contested provision also after it had entered into effect. On 7 February 2014, the Ombudsman adopted an opinion in the inspection case No. 2013-142-26K, stating that the contested provision was incompatible with Article 91 of the Constitution since it envisaged unfounded differential treatment of groups of heads of local government institutions. This opinion was sent to the *Saeima*, therefore, the Public Administration and Local Government Committee revisited the issue of restrictions on combining offices with respect to local government councillors and discussed it at the sittings of 27 February and 2 April 2014, as well as of 17 February and 16 June 2015.

Various proposals related to these restrictions on combining offices were repeatedly discussed by the Committee, focusing, in particular, on the arguments regarding the alleged incompatibility of the contested provision with the equality principle. Proposals were made both to revoke the exemptions and envisage total prohibition on combining offices and to expand the circle of exemptions, as well as to revoke the restriction on combining offices. However, none of these proposals was supported by the Committee (*see The audio recordings of the meetings of the*

Public Administration and Local Government Committee on 27 February and 2 April 2014, 17 February and 16 June 2015 in Case Materials).

The Constitutional Court concludes that the legislator, in preparing the draft law, which includes the contested provision, has considered different variants with respect to restrictions on combining offices and exemptions to these restrictions within a local government. The legislator has repeatedly reviewed the contested provision at the sittings of the responsible *Saima* Committee and assessed its compliance with superior legal provisions.

The Constitutional Court has no doubts that the respective criteria have been chosen objectively, i.e., the legislator has concluded that the institutions, performing the autonomous functions of local governments, referred to in Paras 4, 5 and 6 of Section 15 (1) of the law “On Local Governments”, predominantly are found in local governments with small population and, thus, in establishing an exemption to combining offices with respect to heads of these institutions and allowing them to hold simultaneously also the office of a local government councillor, more extensive and more inclusive democratic representation would be ensured in local governments.

14. The Constitutional Court must verify whether the contested provision reaches its legitimate aim and is not manifestly disproportionate.

14.1. The summoned person, the Ministry of Environment Protection and Regional Development, points out that the nuanced approach, envisaged in the contested provision, ensures that, in particular, in local governments with smaller population, qualified specialists would be interested in running for local government council election and, at the same time, the risk of conflict of interest would be decreased (*see, Case Materials, Vol. 1, pp. 88–89*). In its written reply, the *Saeima* notes that, in choosing exemptions that allow combining offices, it has been taken into consideration that too extensive restrictions on combining offices would affect the quality of work of local governments with smaller populations.

The Constitutional Court concludes that the exemptions to combining offices, established by the legislator, reach the legitimate aim as they expand the

circle of persons who would be interested in running for the office of a local government councillor, without being afraid of losing the office they already hold.

14.2. The Constitutional Court must assess whether the measures chosen by the legislator, in determining restrictions on combining offices and exemptions to them, included in the contested provision, are not manifestly disproportionate.

By defining narrowly exemptions to the restrictions on combining offices for local government councillors, the legislator has fulfilled its obligation to regulate the activities of public administration in compliance with public interests and the values, included in the Constitution. Moreover, in performing this duty, the legislator must take into consideration the aim for which combining of offices is restricted, i.e., preventing conflict of interest.

Pursuant to the principle of good governance, a situation where a person holds two posts simultaneously in a subordinate relationship is inadmissible. Therefore, restrictions on combining public offices are not *per se* to be considered as being incompatible with the principle of equality.

The summoned person, the Corruption Prevention and Combatting Bureau, points out that the exemptions, included in the contested provision, are exhaustive and cannot be interpreted broadly since they ensure separation between the executive power and the decision-making power, thus implementing an effective and transparent model of governance (*see Case Materials, Vol. 2, pp. 94–95*). The legislator has defined exemptions to restrictions on combining offices narrowly and has provided objective substantiation for the need to have them. The Constitutional Court does not find that the restriction on an individual's rights would manifestly outweigh the public benefit.

Hence, the restrictions on combining offices, included in the contested provision, are not manifestly disproportionate.

15. The Constitutional Court concludes that the contested provision has not been adopted arbitrarily and the solution, chosen by the legislator, is not manifestly contrary to the general legal principles, derived from the basic norm of a democratic State, governed by the rule of law, and other constitutional provisions.

Hence, the legislator, in adopting the contested provision, has exercised its discretion duly and has not violated the principle of equality.

Thus, the contested provision complies with the first sentence of Article 91 of the Constitution.

The Substantive Part

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

held:

to recognise Para 4 of Section 38 (2) as being compatible with the first sentence of Article 91 of the Constitution of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into effect on the day of its publication.

Chairperson of the court hearing

I. Ziemele