THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

in Case No. 2014-03-01

5 February 2015, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Kristīne Krūma, Gunārs Kusiņš, Uldis Ķinis and Sanita Osipova,

having regard to a constitutional complaint submitted by Rihards Pētersons, Jana Simanovska, Uldis Kronblūms and Kārlis Vilciņš (hereinafter – the Applicants),

with the participation of the Applicants Jana Simanovska and Uldis Kronblūms, as well as Lauris Liepa and Mārtiņš Daģis, the Applicant's representatives, and

Jānis Pleps, the representative of the institution that adopted the contested act – the Saeima,

and the secretary of the court sitting Elīna Kursiša,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1), as well as Section 19^2 and Section 28 of the Constitutional Court Law,

on 24 November, 16 December 2014 and 6 January 2015, in Riga, heard at an open court sitting the case

"On the Compliance of Section 15(1) of the Law on Elections of the Republic City Council and Municipality Council, insofar it does not allow

associations of electors to submit lists of candidates in municipalities where the number of residents exceeds 5000 and cities, with Article 91 and Article 101 of the Satversme of the Republic of Latvia."

The Facts

1. On 13 January 1994 the Saeima adopted the Law on the Elections of City Council, Regional Council and Municipal Council, which entered into force on 25 January 1994. The title of the law has been amended a number of times. Since 1 July 2009 the title of the law is as follows: "Law on Elections of the Republic City Council and Municipality Council" (hereinafter – the Municipality Election Law).

The first and the second part of Section 15 of the Municipality Election Law initially provided:

"The lists of candidates of members of the Republic City Council and Municipality Council may be submitted by registered political organisations or registered associations thereof.

The lists of candidates of members of the Republic City Council and Municipal Council may be submitted by both registered political organisations and registered associations thereof, as well as associations of electors."

The aforementioned legal norms have been amended several times. With the law of 6 December 1996 "Amendments to the Law on the Elections of City Council, Regional Council and Municipal Council" the words "regional council"(in the appropriate case) was deleted from the first part of Section 15. Whereas the law of 6 April 200 "Amendments to the Law on the Elections of City Council and Municipal Council", worded the first and the second part in Section 15 as follows:

"In cities and municipalities, where the number on inhabitants on the day when the election is announced exceeds 5000, the following shall have the right to submit the lists of candidates for the election of a city council and a municipal council:

1) a registered political organisation (party);

2) a registered association of registered political organisations (parties);

3) two or more registered political organisations (parties) that have not united in a registered association of political organisations (parties).

In all municipalities, as well as cities and regions, where the number of inhabitants on the date when the election is announced is less than 5000, the following shall have the right to submit the lists of candidates for the election of a city council, a regional council or a municipal council:

1) a registered political organisation (party);

2) a registered association of registered political organisations (parties);

3) two or more registered political organisations (parties) that have not united in a registered association of political organisations (parties);

4) an electorate association."

With the law of 11 November 2004 "Amendments to the Law on the Elections of City Council, Regional Council and Municipal Council", the first part of Section 156 of the Municipality Election Law was expressed in new wording:

"1) In cities, municipalities and regions, where the number of inhabitants on the day, when the election is announced, exceeds 5000, the following shall have the right to submit the lists of candidates for the city council, the regional council and the municipal council:

1) a registered political organisation (party);
2) a registered association of registered political organisations (parties);
3) two or more registered political organisations (parties), which have not united in a registered association of political organisations (parties)."

Whereas the words in the second part of Section 15 of the Municipality Election Law "In all municipalities, as well as cities and regions" were replaced with the words "In cities, municipalities and regions".

Since the law of 2 October 2008 "Amendments to the Law on the Elections of City Council, Regional Council and Municipal Council" the first and the second part of Section 15 in the Municipality Election Law have not been amended and are in force in the following wording:

"(1) In municipalities, where the number of inhabitants exceeds 5000 on the day of announcement of the elections, and republic cities the following parties shall be eligible to submit lists of deputy candidates for a Republic City Council and Municipality Council:

1) a registered political party;

2) a registered union of registered political parties; or

3) two or more registered political parties who have not joined in a registered union of political parties.

(2) In municipalities, where the number of inhabitants is less than 5000 on the day of announcement of the elections, the following shall be eligible to submit lists of deputy candidates for a Municipality Council:

1) a registered political party;

2) a registered union of registered political parties;

3) two or more registered political parties who have not joined in a registered union of political parties; or

4) electoral associations."

2. The Applicants hold that the first part of Section 15 of the Municipality Election Law, insofar it prohibits electoral associations to submit lists of candidates in municipalities, where the number of residents exceeds 5000 and republic cities (hereinafter – the contested norm) is incompatible with Article 91 and Article 101 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

It is noted in the application that the Applicants had been nominated by the electoral association "Jūrmalnieki" as candidates for being elected to the Jūrmala City Council at the election of republic city council and municipal council on 1 June 2013. On 22 April 2013 the election commission of Jūrmala City had refused to accept the list of candidates of the electoral association "Jūrmalnieki" on the basis of Section 15 of the Municipality Election Law. The Applicants had appealed against the refusal before the Central Election Commission (hereinafter – CEC) and the decision by CEC – before the administrative court. The Administrative District Court, by the judgement of 13 June 2013 in Case No. A420385313, rejected the application to recognise the decision by CEC as being unlawful. It had been noted in the judgement that Jūrmala was a republican city; therefore pursuant to the first part of Section 15 of the Municipality Election Law an electoral association was not eligible to submit a list of candidates for the Jūrmala City Council.

Allegedly, the restrictions that prohibit electrical associations from submitting lists of candidates for the elections of city councils and municipal councils (hereinafter

– local government election) violate the principle of self-governance, which follows from Article 1 of the Satversme. The system of local government elections should ensure to active groups of local residents, which share common interests in dealing with local issues, the possibility to run for election to the same extent as to political parties, which are interested in adopting decisions also on the national level.

The Applicants note that the restriction to the fundamental rights that follow from Article 101 of the Satversme has been established by a law, which had been adopted and promulgated in due procedure. The legitimate aim of the restriction upon fundamental rights is said to be the protection of a democratic state order. However, the legitimate aim of the restriction could be reached by other measures that would place lesser restrictions upon the Applicants. Persons should be granted the right to run for election, independently of political parties. The benefit that society gains from the restriction upon rights, allegedly, does not exceed the damage inflicted upon the Applicants' rights and legal interests. Moreover, the restriction to election rights, as an exception to a principle, should be interpreted narrowly.

The Applicants' right to demand equal treatment in situations, where they are under similar and comparable circumstances with other persons, allegedly follows from Article 91 of the Satversme. The feature that the Applicants and other persons have in common is said to be the wish to participate in the local government's work by running for the municipality election in that local government, on the territory of which they reside. Thus, persons, who are under similar and according to particular criteria comparable circumstances, are all residents of local governments and wish to run for the local government election. However, differential treatment of persons, who wish to run for local government election, is allowed, depending upon the local government, on the territory of which they reside. Allegedly this treatment has no objective and reasonable grounds, and it is not commensurate.

During the court sitting Lauris Liepa, the Applicants' representative, noted additionally that the infringement upon the Applicant's right manifests itself as a restriction to run for the councils of major local governments from a list submitted by electoral association. L.Liepa specified that the application to the Constitutional Court was submitted by Applicants as natural persons and not by the electoral association "Jūrmalnieki".

3. The institution, which adopted the contested act, – the Saeima – holds that the contested norm complies with Article 91 and Article 101 of the Satversme.

The rights that follow from the first sentence in Article 101 of the Satversme can be exercised only in the way established by law. Therefore the Applicants, allegedly, may exercise the right to participate in a local government's work by running for the municipal council election only in a way established by law and not in any way that they might consider to be more correct or more convenient.

Neither the contested norm, nor any other norm in the Municipality Election Law prohibits the Applicants from running for the local government election. Likewise, legal norms do not impose the obligation upon a person to be a member of a political party or an association of political parties in order to run for election. It is alleged that the Applicants, essentially, want to achieve a situation, where they would be able to choose the form in which to organise themselves to submit a list of candidates for local government election.

The Saeima notes that the legitimate aim of the restriction established by the contested norm is to strengthen the political responsibility of the elected representatives of people, on the basis of a system of parties, i.e., to safeguard the democratic order of the state. Strengthening the importance of political parties is said to be equally necessary both on the level of the Saeima and the local governments. By extending the right of electoral associations to submit lists of candidates, the regional influence and representation of political parties would be weakened. Thus, systems of political parties covering the whole of the state would not develop, and the national level policy would be set against local governments' politics.

The contested norm is said to be suitable for reaching the legitimate aim of the restriction, and no other, less restrictive measures allowing to reach this purpose exist. The regulation of the contested norm is linked with the regulation of the law On Financing Political Organisations (Parties) and Pre-election Campaign Law and subordinated to them. If electoral associations were granted the right to submit lists of candidates for the election of republican city councils, the control over pre-election campaigns and abiding by the principle of free election would be hindered. Likewise, the elector's votes and political representation at the council would become

fragmented, and, thus, the possibility to reach the legitimate aim as effectively would decrease. The Saeima holds that a strong system of political parties, as well as overseeable and effective pre-election campaign counterbalance the restriction to fundamental rights established by the contested norm.

As regards the compatibility of the contested norm with Article 91 of the Satversme, the Saeima upholds the Applicants' view that all those persons, who have passive election right in local government election, are under similar and comparable circumstances. However, it is said that the procedure of electing local government councils at republican cities significantly differs from the procedure of electing councils in municipalities, where the number of inhabitants does not exceed 5000, therefore the differential treatment has objective and reasonable grounds.

At the court hearing Jānis Pleps, the representative of the Saeima, noted that in this case the most important issue was, whether the Applicants' fundamental rights established in Article 101 of the Satversme had been infringed. Namely, whether a person has the right to choose the form in which he exercises the right to run for local government election, and whether these rights follow from the Satversme and international commitments binding upon Latvia. An infringement upon the Applicants' fundamental right, perhaps, could have occurred with regard to elections of republican city council; however, the fundamental rights are not infringed with regard to council elections in municipalities, where the number of inhabitants exceeds 5000.

The contested norm with regard to republican cities had been elaborated as the result of a political compromise. Moreover, the possibility for electoral associations to submit lists of candidates had been intended as a temporary measure, envisaging that over time the electoral associations would become integrated into parties. The contested norm should be seen not as such that prohibits electoral associations to submit lists, but, quite to the contrary, – as an exemption to the principle that lists can be submitted only by political parties. The legislator had allowed this exemption in a situation when political parties had not yet become established.

When providing explanations regarding the compatibility of the contested norm with the first sentence in Article 91 of the Satversme, the representative of the Saeima J. Pleps noted that with regard to the compatibility of the differential treatment with the

principle of proportionality, the same arguments that were provided in connection with Article 101 of the Satversme should be taken into consideration.

4. The summoned person – the Ministry of Justice – holds that the contested norm complies with Article 91 and Article 101 of the Satversme.

The contested norm had been adopted in general interests and is necessary in a democratic society. The legitimate aim of the restriction that the contested norm comprises is to protect the democratic order of the State. With the adoption of the contested norms in the wording that is currently in force, essentially, a new restriction was not introduced; it only preserved the previously established order, according to which electorate associations could not submit a list of candidates for the election of the Riga City Council.

Fair pre-election campaigning and effective system for financing political organisations (parties) play an important role in abiding by the principle of free election. Whereas the contested norm is said to be directly linked to the legal regulation of the respective fields. The control over the actions taken by electorate associations is balanced by the scope of its activities and its target audience. However, this solution is said not to be suitable for the election of republican city councils.

The contested norm is said to be suitable for reaching the legitimate aim of the restriction upon fundamental rights. It is necessary in order to abide by the principle of free election, otherwise the control over pre-election campaigning would be threatened, likewise, the compatibility of the course and the outcome of election with the democratic order of the State could be contested. The contested norm is said to be appropriate, i.e., the benefit gained by society exceeds the possible damage inflicted upon the interests of a private person.

As regards the compatibility of the contested norm with Article 91 of the Satversme, the Ministry of Justice holds that the election of republican city councils significantly differ from the election of municipal councils, therefore the regulation that the contested norm comprises has objective and reasonable grounds.

At the court sitting the representative of the Ministry of Justice Inta Salinieka noted in addition that the State, being aware that it might be difficult for the residents of small municipalities to establish parties, had defined an exemption for them with

regard to submitting a list of candidates for local government election. I.e., the possibility that electorate associations may submit a list of candidates for the election of a municipality council, if the number of inhabitants in the municipality does not exceed 5000 and the list of candidates by electorate association has been signed at least by 20 electors. In smaller municipalities there are grounds to allow exemptions to the existing system, since the number of inhabitants is small, but the representation of their interests must be ensured. Hence, the contested norm is said to comply with Article 91 of the Satversme.

5. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the inclusion of non-party candidate list in municipal elections, if appropriate mechanisms of control were ensured, should be supported.

One of the aims in restricting the circle of those, who submit lists of candidates, could be ensuring effective course of election, excluding the participation of "unserious" candidates. However, it must be kept in mind that the reduction of the number of candidates cannot be an aim in itself for establishing a restriction. To prevent fragmentation of elected bodies, the proportional system of election already envisages the five per cent barrier for being elected to a municipal council.

Another aim of the restriction that the contested norm comprises could be strengthening the system of parties. Participation in political processes through the mediation of political parties is said to be the foundations of Latvian parliamentary democracy. Existence of strong and stable political parties would strengthen democratic traditions in Latvia. To establish, whether the contested norm complies with Article 101 of the Satversme, it must be examined, whether the valid legal regulation establishes proportional requirements for founding political parties. The Ombudsman holds that the minimum number of founders of a party established in law On Political Parties – 200 – with regard to founding a party for participation in the election of republican city council is to be considered as being proportional.

At the court sitting the Ombudsman's authorised representative Ilze Tralmaka noted in addition that a person, who wants to run for the election of a republican city council, must either join a political party or found a new party. It should be considered

as restriction to the passive election right included in Article 101 of the Satversme. However, the restriction established by the contested norm is said to be proportional and the contested norm – compatible with Article 101 of the Satversme. The Ombudsman's considerations with regard to the legitimate aim of the restriction upon the rights established by Article 101 of the Satversme and the principle of proportionality are applicable also to the examination of differential treatment.

6. The summoned person – the Latvian Association of Local and Regional Governments (hereinafter – the Association of Local Governments) – holds that the expansion of the electorate associations' right to submit a list of candidates would not hinder the development of political parties, but would facilitate it.

According to the information that the Association of Local Governments has at its disposal, inhabitants have greater trust in those local governments, where the electorate associations also have the right to submit lists of candidates. Moreover, in the majority of cases the chairpersons of municipal councils, where the number of inhabitants is less than 5000, are not members of political parties. The local government election of 2013 shows that regional parties receive comparatively large support and are trusted by electors.

At the court sitting the authorised representative of the Association of Local Governments Māris Pūķis noted in addition that the members of the Association of Local Government had two directly opposite views regarding the valid regulation. One – to support the expansion of the electorate associations' right to submit list of candidates. The second one – to prohibit electorate associations from submitting lists of candidates for local government election. It was said that currently certain problems with regard to the local governments' role in regional policy could be observed; however, the Association of Local Governments had always supported strengthening of the party system.

7. The summoned person – the author of the concept of the Municipality Election Law, *Dr. iur. h. c., assessor iur., Dipl.-Pol.* Egils Levits – noted during the court sitting that the measure applied by the legislator was not suitable for reaching the legitimate aim of the restriction upon fundamental rights.

In Latvia local governments belong to the executive power, they do not have the properties that are typical of the State and, thus, should be considered as being communal self-governments. Article 101 of the Satversme is said to mean that people, who are affiliated with a particular local government, organise and manage their interests. Allegedly, a democratic state order requires that these local interests were represented. Whereas political parties in the parliamentary system are said to offer to electors certain lines of interest that are linked to a worldview. The issues that fall within the framework of local governments' local interests do not require the same political orientation as the one held by political parties. I.e., the interests to be represented on the local government level are not the same as on the national level. Therefore it is important that alongside parties, also other associations of electors or citizens, representing local interests, were in local governments.

In 1994, when the Municipality Election Law was adopted, the majority of the parliament had the intention to strengthen the system of parties, which at the time was yet in its development stage. Latvian parliamentary system requires a functioning system of parties; therefore with regard to submitting lists of candidates for major large local governments, the monopoly of parties was established.

It is alleged that the contested norm restricts the rights established by Article 101 of the Satversme. The legitimate aim of the restriction is to strengthen political parties. However, the applied measure is said to be unsuitable for reaching the legitimate aim, since the parties are not benefitting in any way from it and, thus, the party system is not strengthened at all. However, this restriction cannot be revoked without ensuring to other groups of electors due possibility to run for local government election. However, with regard to financing and internal democracy these groups of electors should be controlled in accordance with requirements that should be similar to those set for parties.

With regard to the compatibility of the contested norm with Article 91 of the Satversme, E. Levits noted that it should be examined, whether slight differences in the competence of local government could serve as justification for differential procedure in which persons participate in local government work. E. Levits holds the opinion that the differences in competence are not so great to be justified from an individual's vantage point. However, each competence of local governments should be compared.

The more concrete and narrow the regulation, the lesser the need for party monopoly. If the competences are comparable, then differences in the procedure, in which persons may participate in the work of local governments, are incompatible with Article 91 of the Satversme.

8. The summoned person – Associate Professor of the University of Latvia Faculty of Social Sciences, Department of Political Science *Dr. sc. pol.* Ivars Ijabs – noted at the court sitting that the favourable situation created by the legislator in some local governments; i.e., that electoral associations had been granted the right to submit lists of candidates, should not be recognised as being appropriate for all local governments.

The issue to be examined in the case under review in Latvia, similarly to other European states, is said to have gained relevance because parties, in fact, have been unable to perform the function that had been entrusted to them. I.e., they are unable to justify their legitimacy in a way that would not lead to questions regarding the feasibility of different other alternatives. In the majority of democratic countries, in abiding by various requirements, the possibility to run for local government election has been granted also lists of candidates that are not connected to political parties. However, this aspect should be examined in the context of the approach taken by the particular countries to the questions, who is allowed to participate in politics and how great emphasis is placed upon parties, not upon individual candidates.

Recently two contradictory trends are said to be observed in Latvia. On the one hand, historically Latvian election system has been more oriented towards parties, since an aim has been set – to strengthen the party system. On the other hand, the public opinion to a large extent turns to the candidates. For example, the results of the Saeima election clearly show that the society wants to vote for concrete candidates.

With regard to restricting an individual's rights, I. Ijabs noted that the currently established "limit of 5000" should be understood in the meaning of positive discrimination. In some municipalities people find it difficult to establish political parties or to run for election from their lists, therefor a special regulation, favourable for the particular situation has been established – the right to run for election from the list of electorate association. However, the empiric arguments and data provided in the

application allegedly do not mean that electorate associations would be desirable in all local governments of Latvia.

9. The summoned person – member of the Expert Group for Improving Governance, established by the President of the State, *Dr. sc. pol.* Daina Bāra – noted at the court hearing that electors' activity should be facilitated, *inter alia*, by establishing electorate associations. However, electorate associations should participate in election in those places, where the law allows it, namely, the small municipalities.

Political parties are important in long-term development of democracy. In Latvia parties had been "neglected" for many years. Little attention was paid to explaining the significance and role of political parties. This is not correct, even though parties not always work well. It was said that there were certain problems in the system of political parties; however, it should be improved and developed. It was said that crises of parliamentarism were typical of those states that had weak and changing political parties. This is allegedly linked to distrust in the parliament, distrust in political parties. To a certain extent distrust in political parties was said to be linked also to growing populism.

To accustom the inhabitants of municipalities to founding political parties, the experience of Scandinavian countries with regard to legal regulation on regional parties could be used. Regional parties could be numerically smaller than parties of national level.

10. The authorised representative of **the summoned person – the Latvian Association of Large Cities** – Ineta Vašuka noted at the court hearing that the Latvian Association of Large Cities (hereinafter – the Association) did not support the participation of electorate associations in local government election.

The basic issue of the case under review was said to be the question of a person's rights that were infringed. I.e., whether a person's right to be elected a member of the municipal council, if a person was not a member of a political party, was violated, or whether the contested norm was interpreted as a prohibition to participate in local government work. In the particular case the participation in local government work is not denied.

The aim, with which an electoral association participates in local government election, should be examined – to gain power or to participate in local government work in public interests. The decisions adopted by republican city councils should be successive and lasting, such that would exceed the term of four years. Electorate associations are linked to the risk that these might be established for running at only one election.

It was said that not all decisions by local governments are local by nature. Local governments deal also with issues of regional importance, which should be defined in the programmes of political parties, so that they would be able to report to the electors on meeting the objectives set for the party. If groups of persons without an institutional structure of their own were to participate in election, this could threaten the development of the local government on the regional and also on the national level.

11. The summoned person – director of market and public opinion research company SKDS Arnis Kaktiņš – noted at the court hearing that no concrete and credible data were available with regard to whether public attitude towards electorate association was more favourable than towards political parties.

One would doubt, whether survey data would show major difference between local governments, where party lists may run for election, and local governments, where electorate associations are allowed to run for election. The examination of the outcomes of various other surveys lead to the conclusion that the main factor, which determines the way electors vote, is personalities. Likewise, the identification of parties is also important; however, personalities are the decisive factor.

A. Kaktiņš expressed the opinion that as to the development of public awareness and values, the situation in Latvia was not the same as in other European countries and, possibly, this was the reason why parties were not popular in Latvia. A decade ago a survey had been launched, the results of which should reflect the affiliation of Latvia's inhabitants with public organisations or any other kinds of groups. The data of the most recent survey showed that more than 70 per cent of population did not belong to any organisations. This, allegedly, shows that society is fragmented. Allegedly, it is important to be aware of the public opinion, but it is not always rational to follow it.

The thesis that the trust in political parties was decreasing could not be upheld. Data on public trust in parties had been available since 2010. It shows that in 2010 seven per cent of the respondents trusted parties, in 2011 – nine per cent, in 2012 – nine per cent, but in 2013 – 13 per cent. Even though the level of trust is very low, the dynamics is positive. Likewise, in the period from 2010 to 2013 also public trust in local governments has grown – from 41 per cent in 2010 to 61 per cent in 2013.

The Findings

12. The Applicants request the Constitutional Court to examine the compatibility of the contested norm with Article 91 and Article 101 of the Satversme.

At the court hearing the Applicants' representative specified the claim in the part regarding the compatibility of the contested norm with Article 91 of the Satversme by noting that it was requested to examine the compatibility of the contested norm with the first sentence in Article 91 of the Satversme.

Whereas with regard to the part of the claim concerning the compatibility of the contested norm with Article 101 of the Satversme, the Applicants' representative noted that only the first sentence of the said Article was of importance for the Applicants, even though the wording of the claim comprised the whole of Article 101. It followed also from the legal arguments provided in the application and at the court hearing that, essentially, the compatibility of the contested norm with the first sentence of Article 101 of the Satversme was challenged.

Thus, in the case under review the Constitutional Court will examine the compatibility of the contested norm with the first sentence of Article 91 of the Satversme and the first sentence of Article 101.

13. The participants of the case have expressed different opinions on whether the rights enshrined in the first sentence of Article 101 of the Satversme should be applicable to the Applicants' claim.

The Applicants hold that every citizen of Latvia should have the right to establish an electorate association and that the prohibition to run for the election of major municipal councils from a list of electorate association infringes upon the right

established in Article 101 of the Satversme. Whereas the representative of the Saeima pointed out during the court hearing that it should be verified, whether a person's right to select the form of exercising his or her passive election right follows from the Satversme.

Therefore the Constitutional Court must first of all establish the scope of the first sentence in Article 101 of the Satversme.

14. The first sentence of Article 101 of the Satversme provides: "Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and of local government, and to hold a position in the civil service."

The Applicants' claim is linked only to one type of participation or a citizen's right to participate in the establishment of a local government council. The Constitutional Court has recognised that Article 101 of the Satversme defines the right of a citizen of Latvia or any other member state of the European Union, having full rights, equal subjective voting right, *inter alia*, the right to be a candidate at local government election (*see Judgement of 15 June 2006 by the Constitutional Court in Case No. 2005-13-0106, Para 13.5*). The Satversme envisages that the form of exercising this right must be established by law (*see Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 1 of the Findings*). Moreover, the State has the obligation to guarantee to every citizen not only formal right to participate, but also to create preconditions that would allow a citizen to participate in the work of the State and of local governments (*see Judgement of 7 November 2013 by the Constitutional Court in Case No. 2012-24-03, Para 13*).

The Constitutional Court has already noted that the State has great discretion with regard to the implementation of the election right (*see Judgement of 23 September 2002 by the Constitutional Court in Case No. 2002-08-01, the Findings).* This means that the legislator, in guaranteeing the implementation of the rights enshrined in the first sentence of Article 101 of the Satversme, has broad discretion in regulating the procedure for electing local governments, *inter alia*, also to determine, which subjects and in what form have the right to submit lists of candidates for local government election. However, in establishing the aforementioned procedure, the norms and principles of the Satversme must be complied with.

However, the legislator does not have the obligation to establish such legal regulation on local government election that would allow every citizen to choose his or her procedure for exercising passive election right outside the one established by law. Likewise, the international commitments that Latvia has assumed, for example, by the second part in Article 3 of European Charter for Local Self-Government and Article 25 of International Covenant on Civic and Political Rights, establish only general principles that the procedure regulated by the State must comply with, leaving the choice of concrete solutions at the discretion of the legislator in each particular country.

Thus, the State's obligation to establish in concrete form, i.e., by law, the procedure in which every citizen can exercise his or her passive election right in local government election and that would comply with the norms and principles of the Satversme follows from Article 101 of the Satversme.

Thus, in the framework of the case under review, the Constitutional Court must verify, whether the legislator has fulfilled its obligation to establish a procedure for each citizen to exercise his or her passive election right at local government election.

15. The legislator has included the legal regulation on local government election in the Municipality Election Law.

Section 8 of the Municipality Election Law regulates, which persons have the right to run for local government election, as well as defines pre-requisites for becoming a candidate. Section 9 of the law defines, which persons may not be proposed as candidates and be elected to a local government council. Whereas Chapter 4 of the law establishes the procedure for submitting the lists of candidates for local government council election.

The procedure, in which a citizen may exercise his or her passive election right, is basically defined in the first and the second part of Section 15 of the Municipality Election Law. These legal norms define the subjects, which have the right to submit lists of candidates for local government election. These subjects are registered political parties, registered association of registered political parties, unregistered associations of two or more political parties, and electoral associations.

The concepts of political parties and their associations, their legal status, rules on establishing them and the rules on their activities are mainly regulated in the law On

Political Parties. Section 2(1) and Section 3 of the law On Political Parties provide that a political party is an organisation, which at the moment when it is entered into the register of political parties acquires the status of a legal person. A political party is created to engage in political activities, to participate in pre-election campaign, to propose candidates, to participate in the work of the Saeima and of the local government councils, and of the European Parliament, to implement with the mediation of the elected members the program of the party and to participate in the establishment of institutions of public administration. Whereas the rules on the participation by electoral associations in local government election are included in the Municipality Election Law. The Municipality Election Law does not comprise the pre-requisites for establishing electoral associations; however its Section 15(3) explains the concept of "electoral association". I.e., an electoral association is an unregistered association created by persons, who have signed the respective list of candidates, as well as persons that are proposed by this list of candidates. The persons submitting the particular list of candidates are responsible for the legality of actions taken by the electorate association.

It follows from the above that legal status of political parties and associations thereof differs from the legal status of an electorate association. Moreover, the legislator has also established different procedure for running for the local election for the candidates' list of the aforementioned subjects. In accordance with the first and the second part in Section 15 of the Municipality Election Law, the following have the right to submit a list of candidates in all local governments: 1) a registered political party; 2) a registered association of political parties; 3) an unregistered association of two or more political parties. In addition to these in those municipalities, where on the day when election is announced the number of inhabitants is less than 5000 (hereinafter – small municipalities), electorate associations also have the right to submit a list of candidates. Thus, a citizen, who has the right and who wishes to run for election of local government council, may be proposed as a candidate in one of the lists of candidates prepared by subjects envisaged in law.

Thus, the legislator by the Municipality Election Law has established a procedure, in which every citizen may exercise his or her passive election right.

16. In establishing the procedure, in which each citizen may exercise his or her passive election rights, the legislator must abide by the norms and principles of the Satversme. The fact that the legislator exercises its discretion in establishing the procedure, in which citizens exercise their passive election rights, *per se* does not restrict a person's fundamental rights defined in Article 101 of the Satversme. However, if the procedure established by the legislator does not comply with any of the norms of principles of the Satversme, then it should be recognised as being incompatible with Article 101 of the Satversme.

The participants of the case have not called into the question the fact that the procedure in which every citizen may exercise his or her passive election rights has been established by law that has been adopted and promulgated in compliance with the Satversme and the Saeima Rules of Procedure. It follows from the application and the statements made by the Applicants' representative at the court hearing that the incompatibility of the contested norm with the Satversme predominantly manifested itself in the fact that in small municipalities citizens have the right to run for local government election from a list of electorate association, whereas in the republican city Jūrmala they do not have this right. I.e., the Applicants hold that another group of persons that are under similar and comparable circumstances to them have more extensive rights to run for local government election. Therefore in the case under review the fact, whether the legislator in establishing the procedure in which every citizen may exercise his or her passive election rights has complied with the principle of equality, is of decisive importance.

Thus, to establish, whether the contested norm complies with the first sentence of Article 101 of the Satversme, its compliance with the principle of equality, enshrined in the first sentence of Article 91 of the Satversme must be examined.

17. The principle of equality included in the first sentence of Article 91 of the Satversme prohibits state institutions from adopting such norms that without reasonable grounds allow differential treatment of persons, who are under similar and according to particular criteria comparable circumstances. At the same time the principle of equal treatment allows and even demands differential treatment of persons, who are under

different circumstances, as well as allows differential treatment of persons, who are under similar circumstances, if there are objective and reasonable grounds for that (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 7, and Judgement of 7 June 2012 in Case No. 2011-19-01, Para 11*).

In examining, whether the contested norm complies with the first sentence in Article 91 of the Satversme, it must be established,

1) whether and which persons (groups of persons) are under similar and according to particular criteria comparable circumstances;
2) whether the contested norm envisages similar or differential treatment of these persons;
3) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, Judgement of 10 June 2011 by the Constitutional Court in Case No. 2010-69-01, Para 10*).

18. The Applicants note that the persons, who are under similar and according to particular criteria comparable circumstances, are all inhabitants of a municipality, who wish to run for local government election. The Saeima in its written reply also upholds this opinion (*see the written reply in Case Materials, Vol. 1, p. 76*).

Essentially, the first and the second part of Section 15 of the Municipality Election Law establish two legal regulations on submitting lists of candidates for local government election. The first envisages submitting a list of candidates for the election of the republican city councils or councils of municipalities, where the number of inhabitants on the day when election is announced, exceeds 5000 (hereinafter – large municipalities), the second – on submitting lists of candidates for small municipality election. Thus, in the case under review two groups of persons could be compared: first, citizens, who wish to run for election in a republican city or a large municipality, and, secondly, citizens, who wish to run for election in a small municipality.

To establish, whether and which persons are under similar and according to particular criteria comparable circumstances, the common feature of these groups

should be identified (*see, for example, Judgement of 21 May 2004 by the Constitutional Court in Case No. 2003-23-01, Para 12*). In the case under review this common feature is the citizen's wish to exercise his or her passive election right at municipal election.

Hence, both groups of persons are under similar and comparable circumstances.

19. The Applicants hold that differential treatment of persons is allowed, depending upon the municipality, on the territory of which he or she resides.

A person's place of residence cannot be seen as the only pre-requisite for running for election to a council of a particular municipality. Pursuant to Section 8(2) of the Municipality Election Law, a person's registered place of residence during the period of last 10 months is one among three possible pre-requisites for running for election. This pre-requisite was used by the Applicants to run for the election of the Jūrmala City Council (*see Case Materials, Vol. 1, pp. 22, 25, 28, 31*). Para 2 and Para 3 of Section 8(2) of the Municipality Election Law provides that also those persons, who have worked in the respective administrative territory (as an employee or a self-employed person) for at least four last months or who own in the respective territory real estate that has been registered according to procedure established by law, may also run for election.

The first and the second part of Section 15 of the Municipality Election Law create a situation, where a citizen has the right to run for the election of a republican city council or a council of a large municipality from the list of registered political party, a registered association of registered political parties or unregistered association of two or more political parties, whereas at an election of a small municipality council a citizen has the right to run for election from a list of one of the aforementioned subjects, as well as a list of an electorate association. This means that the procedure for submitting lists of candidates differs, depending upon the type of administrative territory or the number of its inhabitants, where a citizen wishes to run for council election.

However, in the case under review the Constitutional Court is not examining, whether the legislator differentiated between republican cities and large municipalities from the small municipalities with good reasons, but whether the differences in the

procedure for exercising passive election rights *per se* comply with the principle of equality.

Thus, the comparable groups are treated differently.

20. Differential treatment of persons, who are under similar and comparable circumstances, established by the legislator, must have a legitimate am (*see, for example, Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 21*). The Constitutional Court has recognised that in the proceedings before the Constitutional Court the institution, which has adopted the contested act, first and foremost has the obligation to indicate the legitimate aim (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 13.2*).

20.1. It follows from the explanations provided at the court hearing by the Saeima's representative that the legitimate aim of the differential treatment is strengthening the system of political parties. This statement was confirmed also by the summoned person E.Levits, who at the time when the Municipality Election Law was drafted and adopted was the Minister for Justice (*see transcript of the sitting of the Constitutional Court on 16 December 2014, Case Materials, Vol. 3, pp. 48, 52*).

Political parties are an important element of a democratic state. As the Constitutional Court has already recognised in its case law, a political party is an association of persons that has certain ideology and the main aim of which is gaining political power to implement this ideology in the state in accordance with the aims and principles put into the party's programme (*see Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 19*). Political parties form the link between society and the State power, ensuring organised participation of society in political processes. The European Court of Human Rights (hereinafter – ECHR) has recognised that political parties differ from other organisations involved in politics by making a proposal to electors regarding comprehensive model of society and are able to implement this proposal, if coming into power (*see ECHR Grand Chamber Judgement of 13 February 2003 in case "Refah Partısı [the Welfare Party] v. Turkey", Applications No. 41340/98, 41342/98, 41343/98 and 41344/98, Para 87*). The summoned person D. Bāra also stated at the court hearing that political parties were the

foundation and bulwark of democracy (*see transcript of the sitting of the Constitutional Court on 16 December 2014, Case Materials, Vol. 3, p. 101).*

Thus, strengthening the system of political parties is aimed at the protection of a democratic state order and may be recognised as being a legitimate aim for establishing differential treatment.

20.2. The Saeima notes that in adopting the Municipality Election Law an attempt was made to reach a balance between the necessity to strengthen the system of political parties and the necessity to ensure democratic elections in small municipalities, promoting political competition and representation of residents' interests there.

At the time, when the Municipality Election Law was adopted, in 1993 - 1994, the system of political parties was only developing. However, at that time opinions also differed as to which subjects should be granted the right to submit lists of candidates for local government election. The draft law submitted by the government envisaged that the lists of candidates could be submitted both by political parties and electorate associations. However, definition and status of an electorate association created problems (*see transcript of the Saeima sitting of 11 November 1993, http://www.saeima.lv/steno/st_93/111193.html, accessed on 06.01.2015.*). Whereas the proposal submitted by the faction of Saeima members from "The Latvian National Independence Movement" envisaged that the right to submit lists of candidates should be granted only to registered political organisations, parties or associations of such organisations (*see Case Materials, Vol. 3, pp. 134, 135*). Finally, Section 15 of the law was adopted in the wording that stipulated that the lists of candidates for the election of a republican city council and a regional council could be submitted by registered political parties or registered associations thereof, but for the election of a regional city council and a municipal council – in addition to the subjects mentioned above, also an electorate association.

It must be taken into consideration that the local government council is a body that politically represents the inhabitants of a local government (*see: Levits E. Pašvaldību likuma koncepcija. 2003, Para 34, http://www.public.law.lv/ptilevicpasvaldiba.html, accessed on 06.01.2015.*). Whereas one of the main features of a local government it is electability (*see, for example:*

Stucka A. Latvijas pašvaldību sistēmas pilnveidošanas aktuālie valststiesību jautājumi. Promocijas darbs. Rīga: Latvijas Universitāte, 2012, pp. 34 – 35). Thus, one of the primary objectives of local government election is to establish a representative body for the local government inhabitants.

It is possible to establish any representative body – a parliament or a local government council, if the electors have the possibility to choose, for which of the submitted lists of candidates to vote. Also ECHR, in underscoring the necessity of the possibility to choose, in its case law with regard to Article 3 in Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with election of legislator has noted that free manifestation of the people's opinion is unimaginable where a system of political parties that would represent opinions that are widespread among the population of the state is non-existent (*see ECHR Judgement of 15 April 2014 in case "Oran v. Turkey", Applications No. 28881/07 and 37920/07, Para 57*). These insights are applicable also to the election of a local government council as a representative body.

The Saeima underscores that electorate associations are an exemption to a principle, in accordance with which only political parties have the right to submit lists for elections of all local government councils. In adopting this regulation, the legislator had taken into consideration the fact that in small municipalities representation by political parties might not have evolved. At the court hearing the representative of the Ministry of Justice also confirmed this opinion (*see transcript of the Constitutional Court sitting of 16 December 2014, Case Materials, Vol. 3, p. 37).*

Thus, to ensure that bodies of representation are established in all local governments of Latvia, irrespectively of the number of inhabitants and the number of represented political parties, the legislator has established, as an exemption to the general procedure, the right to citizens in small municipalities to run for election also from lists of electorate associations. I.e., by envisaging differential treatment in the procedure for exercising a citizen's passive election rights, the legislator wished to strengthen the system of political parties and also to ensure that in municipalities with small number of inhabitants a body of representation, which sufficiently broadly reflects the interests of inhabitants of the municipality, were established.

It follows from the above that the differential treatment established with the contested norm is aimed at strengthening political parties, at the same time ensuring the establishment of a local government council as a body of representation also in small municipalities. I.e., the aim of the differential treatment established by the legislator is the protection of democratic state order.

Thus, the differential treatment established by the legislator has a legitimate aim.

21. To establish, whether in introducing differential treatment, the principle of proportionality has been complied with, it must be established: 1) whether the measures used by the legislator are appropriate for reaching the legitimate aim: 3) whether such action is necessary, i.e., whether the aim cannot be reached by other measures, less restrictive upon an individual's rights and legal interests; 3) whether the legislator's action is commensurate or appropriate, i.e., whether the benefit gained by society exceeds the damage inflicted upon an individual's rights and legal interests (*see, for example, Judgement of 18 February 2011 by the Constitutional Court in Case No. 2010-29-01, Para 16*).

22. As concluded above, in accordance with the general procedure established in the first and the second part of Section 15 of the Municipality Election Law, political parties and associations thereof may submit lists of candidates for the election of any local government council in Latvia.

The legislator uses various legal measures to implement policy aimed at strengthening the system of political parties. For example, in 2010 regulation was adopted on granting state funding to political parties and associations thereof that met certain criteria. This means that the differential treatment established by the contested norm is only of the measures used by the legislator to strengthen the system of political parties. However, it must be taken into consideration that the limits of the claim are binding upon the Constitutional Court; therefore, in the framework of the case under review it does not examine the impact of other measures used by the legislator upon the system of political parties and their suitability for strengthening the system.

By establishing differential treatment, the legislator has tried to encourage persons, who want to exercise their passive election right, to become involved in the activities of political parties by establishing a political party, becoming a member of a political party or by participating in the activities of political parties in some other way. This allows achieving more extensive participation of persons in political process and strengthening the system of parties. It follows from the information available from the register of political parties that currently 75 political parties and associations thereof are registered in Latvia, moreover, a number of them have pronouncedly regional interest, for example, "Jūrmala – mūsu mājas", "Political Party OGRES NOVADAM", KRIMULDAS NOVADA PARTIJA and others (*see the list of registered political parties and associations thereof on the homepage of the Register of Enterprises of the Republic of Latvia, http://www.ur.gov.lv/partijas.html, accessed on 06.01.2015*).

At the same time the legislator has provided to electors the possibility of choice with regard to lists of candidates submitted for local government election. In addition to the differential treatment established by the contested norm, the legislator has also established a special regulation in the first and third part of Section 25 of the Municipality Election Law for those situations, where until the term defined in Section 15 of this law not a single list of candidates has been registered for the election of the council of the particular local government, only one list of candidates has been registered, or if the number of registered candidates is smaller than the number of council members to be elected in the particular local government. Whereas the actual situation shows that several lists of candidates are submitted also for the election of small municipalities. For example, on 18 February 2013, when the local government council election of 1 July 2013 was announced, Baltinava, Alsunga, Mērsrags and Rucava municipalities had the smallest number of inhabitants – less than 2000 inhabitants in each of them (*see information available on the homepage of CEC, http://www.cvk.lv/pub/public/30523.html, accessed 06.01.2015.*). Two lists of candidates were submitted for the election of Baltinava municipal council, four – for the election of Alsunga municipal council, among these – one list of a political party, two lists – for the election of Mērsrags municipal council, six – for the election of Rucava municipal council, of these one was a list of apolitical party (*see publication by CEC "Republikas pilsētas domes un novada domes vēlēšanas 2013. gada 1. jūlijā".*

Rīga: 2013, pp. 145, 163, 290, 331, http://www.cvk.lv/pub/upload_file/2013/Pasvaldibu%20velesanu%20rezultati%202013_gramata.pdf, accessed on 06.01.2015.). Thus, the valid regal regulation ensures that a municipal council as a body of representation is established also in small municipalities.

Thus, the measure used by the legislator is appropriate for achieving the legitimate aim of differential treatment.

23. It follows from case materials, as well as explanations provided at the court hearing and opinions of summoned persons that a more lenient measure in the case under review would be granting the right to every citizen to run for election for any local government council from a list of electorate association. The Applicants note that in the absolute majority of European Union states electorate associations have the right to submit lists of candidates for local government election.

The Constitutional Court has recognised that the legal regulation of other states, in dealing with particular issues in the legal system of Latvia, cannot be directly applied, except for cases defined in law. In comparative law analysis the functional context must always be taken into consideration. It follows from the essential legal, social, political, historic and systemic differences between the legal systems of various countries (*see Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 24.1*). The procedure of election is closely linked to the historical development, structure, and political situation of each state, as well as to a number of other factors. Therefore the practice of other states, i.e., the fact that electorate associations have been granted the right to submit lists of candidates for local government election does not impose an obligation upon Latvia's legislator to act similarly.

Moreover, the Constitutional Court has repeatedly noted that a more lenient measure cannot be just any other measure, but such that allows reaching the legitimate aim in at least the same quality (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings, and Judgement of 10 June 2011 in Case No. 2010-69-01, Para 14.2*).

By granting the right to every citizen to run for election to any local government council, perhaps, could ensure broader representation of inhabitants' interests at the local government council. However, until major differences in the legal regulation on political parties and electorate associations exist, this measure would not foster strengthening the system of political parties on the national scale as is done by the differential treatment established by the contested norm.

Therefore, it is impossible to reach the legitimate aim of differential treatment in at least the same quality by a more lenient measure.

24. The Applicants hold that the requirement of the law to run for the election of republican city councils and the councils of large municipalities from the lists of political parties or associations therefor as being excessive.

However, essentially, the Applicants have not doubted that every citizen, within the framework of the valid regal regulation, actually has the possibility to exercise his or her passive election rights. At the court hearing the Applicants' representative confirmed that two of the Applicants – U. Kronblūms and R. Pētersons – before the local government election of 1 June 2013 had run for the election of the Jūrmala City Council, i.e., had been included on the lists of candidates of political parties. Moreover, in order to run for local government election from the list of a political party or an association of political parties, it is not mandatory for the person to be a member of the respective party or an association of political parties (*see, for example, Judgement of 10 May 2013 by the Constitutional Court in Case No. 2012-16-01, Para 31.2*).

Whereas the information provided by CEC on the number of lists of candidates submitted at the republican cities for local government elections in 2001, 2005, 2009 and 2013 shows that even in the framework of the currently valid regulation the electors have been ensured extensive possibilities to choose a list of candidates. For example, for the election of the Jūrmala City Council in 2001 16 lists of candidates were submitted, in 2005 – 21 lists, in 2009 – 14 lists, whereas in 2013 – 16 lists (*see information provided by CEC, Case Materials, Vol. 2, pp. 23-34i).*

During the court hearing the summoned persons I. Ijabs admitted that the possibility and necessity to run from a list of a political party had also positive manifestations. Party membership was said to make the so-called aspect of patronage

more transparent and understandable (*see transcript of the Constitutional Court sitting of 16 December 2014, Case Materials, Vol. 3, p. 72)*. The Ombudsman expressed the opinion that the uniting of politically active inhabitants into parties that are registered in a procedure established by law promotes openness in the activities of political forces, as well as financial and political accountability (*see the Ombudsman's opinion, Case Materials, Vol. 2, p. 42*). The summoned person A. Kaktiņš holds that Latvian society rather needs a force that would unite it on the level of political parties, since society was said to be fragmented (*see transcript of the Constitutional Court sitting of 16 December 2014, Case Materials Vol. 3, p. 119*).

The established differential treatment ensures that its legitimate aim is reached; however, it does not deny to any citizen the right to exercise his or her passive election right in procedure established by law. Moreover, the benefit to society is an organised and better understandable political process, since the legal regulation established for political parties and associations thereof promotes openness in the activities of political parties.

It must be taken into consideration that the legislator has the right to exercise its discretion at any moment and decide on amending the Municipality Election Law to grant to all citizens more extensive possibilities for exercising their passive election right. However, also such regulation would have to comply with the principles of a judicial and democratic state, *inter alia*, would have to ensure free election, as well as equal rules with regard to the financing of lists of candidates and pre-election campaign.

Thus, the legislator, in establishing differential treatment in the procedure in which citizens exercise their passive election rights, has complied with the principle of proportionality and has not violated the principle of equality set out in the first sentence of Article 91 of the Satversme.

Therefore, the contested norm complies with the first sentence of Article 91 and the first sentence of Article 101 of the Satversme.

The Substantive Part

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

h e l d :

To recognise Section 15 (1) of the Law on Elections of the Republic City Council and Municipality Council, insofar it does not allow associations of electors to submit lists of candidates in municipalities where the number of resident exceeds 5 000 and cities, as being compatible with the first sentence of Article 91 and the first sentence of Article 101 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement was announced in Riga on 5 February 2015.

The Judgement comes into force on the day of its pronouncement.

Chairman of the court hearing A.Laviņš