



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Riga, 3 November 2022

in case No 2021-43-01

The Constitutional Court, composed of Chairperson of the Court Hearing Gunārs Kusiņš, Justices Irēna Kucina, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa and Jautrīte Briede,

on the basis of an application of person J,

based on Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 1, Section 17, Paragraph one, Clause 11, Sections 19.² and 28.¹ of the Constitutional Court Law,

on 4 October 2022, in the written procedure, examined the case

“On Compliance of Section 6, Clause 2 of the Law on the Election of Local Government Councils with the First Sentence of Article 101, Paragraph Two of the Constitution of the Republic of Latvia”.

Establishing Part

1. Section 6, Clause 2 of the Law on the Election of Local Government Councils determines that in the Republic of Latvia, persons who are serving a sentence in places of deprivation of liberty (hereinafter also – prison) have no right to elect the council (hereinafter also – the contested provision).

2. The **Applicant, person J** (hereinafter – the Applicant), holds that the contested provision is incompatible with the first sentence of Article 101, Paragraph two of the Constitution of the Republic of Latvia (hereinafter – the Constitution) because it denies them the fundamental right guaranteed to the citizens of the Republic of Latvia to elect a

local government. The applicant is a Latvian citizen and has been serving a prison sentence in Jēkabpils Prison since 2020. They had applied to the prison administration to exercise their right to vote in the local government council elections, but their request had been rejected.

The Applicant holds that the contested provision is formally established by law, however, in the given case it is not a law on the merits because it is contrary to the principle of good lawmaking. Namely, the legislator has failed to examine the compatibility of the contested provision with the Constitution, taking into account the judgments of the Constitutional Court and the European Court of Human Rights (hereinafter – the ECHR).

The restriction of fundamental rights established in the contested provision also does not have any of the legitimate aims referred to in Article 116 of the Constitution. In particular, it is likely aimed at facilitating local election commissions' and prison administrations' jobs by relieving them of the obligation to organise voting for voters in prisons. However, facilitating the work of the executive power is not in itself compatible with any of the legitimate aims mentioned in Article 116 of the Constitution.

There are other, alternative means that would be less restrictive of the fundamental right guaranteed by the first sentence of Article 101, Paragraph two of the Constitution, such as voting by post or denying the right to vote only to certain groups of convicted persons, while ensuring a reasonable link between the offence and the deprivation of the right to vote.

The restriction on fundamental rights is also inadequate, since facilitating the work of the local election commissions and the prison administration cannot be regarded as public interest. On the contrary, society has an interest in ensuring that as many citizens as possible participate in elections and that their participation in the democratic process is not hindered. This would give greater legitimacy to the elected local government councils and allow for the election of a local government council that accurately reflects the views of the local electorate as a whole. It is in the interest of society that the convicted person remains connected to society and to their place of residence, as well as stays up to date with social and political developments and can successfully reintegrate into society after serving their sentence.

Thus, the right to vote of convicted persons may be restricted only in individual cases, on the basis of individual justification of the link between the prohibition to vote and the conduct of the individual or the circumstances of the particular case. However, the contested provision prohibits persons serving a sentence of deprivation of liberty from voting in local government elections in all cases, regardless of the crime for which they have been convicted, regardless of their actions or other circumstances. Even if the contested

provision would bring some benefit to society, it would not ensure a fair balance between the benefit to society and the loss that would result from the complete exclusion of persons serving sentences in prison from voting in local government elections.

In the opinion submitted after having familiarised with the materials of the case, the Applicant indicates that no other party to the proceedings holds that the contested provision complies with Article 101 of the Constitution. Since the legislator has not fulfilled its obligation to justify the legitimate aim of the restriction of fundamental rights, i.e., it has not indicated this in either the annotation of the draft law or in the reply, the contested provision must be recognised as an unjustified restriction of fundamental rights and incompatible with the first sentence of Article 101, Paragraph two of the Constitution. Moreover, the *Saeima* did not provide an assessment in its reply of whether the contested provision complies with the principle of proportionality.

3. The institution that issued the contested act – the *Saeima* – notes in its reply that the contested provision was adopted with the 11 November 2004 amendments to the Law on Elections to the Local Government Council. The aforementioned amendments were adopted in accordance with the procedure established by the Constitution and the Rules of Procedure of the *Saeima* and promulgated within the time limit established by the Constitution, publishing them in the official gazette *Latvijas Vēstnesis*. The *Saeima* also holds that no procedural irregularities could be discerned in the adoption of the contested provision, and it was sufficiently clearly formulated.

The regulation providing that persons serving sentences in prison are not entitled to participate in local government elections has been in force since 25 January 1994 and has been applied in all local government elections since the restoration of independence of the State. Following the development of democracy, the legislator has reduced the restrictions on active voting rights in local elections. In particular, the right to vote is initially denied to persons who are suspected, accused or on trial, if arrest has been applied as a security measure, as well as to persons who have been declared lacking the capacity to act in accordance with the procedure laid down by law. However, at present, the only group of persons who are denied the right to actively vote, even if they meet other requirements established by law, are the persons mentioned in the contested provision, namely, persons serving sentences in prison.

The restriction of fundamental rights provided for in the contested provision applies only to persons who have been found guilty of a criminal offence and sentenced to the most severe possible penalty – deprivation of liberty. The right to vote is not denied to persons who have been found guilty of a criminal offence but who have been sentenced to other

penalties, such as probation or a fine. Thus, the circle of persons deprived of the active right to vote in local government elections is rather narrow – as of 31 December 2020, there were 3104 prisoners in prison, 2294 of whom were convicted persons. Criminal liability is only provided for the most serious and dangerous offences, while deprivation of liberty is the most severe form of basic punishment. Deprivation of liberty as the basic sentence is imposed only in the cases where it is impossible to otherwise achieve the goals of the criminal punishment, i.e., to protect public safety, to restore justice, to punish the offender for the committed criminal offence, to socially rehabilitate the convicted person, to achieve that the convicted person and other persons comply with the law and refrain from committing criminal offences. A similar practice of restricting the right to vote in active local government elections existed in Latvia before the Second World War. In particular, persons sentenced to deprivation of liberty for crimes committed for the purpose of acquiring property, were not eligible to participate in the elections of city councillors if five years had not elapsed since the date of serving the sentence. However, persons who had been sentenced by a court to imprisonment for violation of the electoral law, theft, fraud, possession of stolen property and misappropriation of another's property, or for the prohibited manufacture and sale of vodka, were not eligible to participate in the elections to the local community council, if five years had not passed since the date of completing the sentence. Today, a similar restriction on active suffrage exists in Estonia.

The regulation providing that persons serving sentences in prison are not entitled to elect the local government council was adopted by the 5th *Saeima*, and its adoption was a political decision of the time. However, the development of suffrage is an ongoing process.

4. Other party to the proceedings –the Ministry of Justice, points out that the right to vote is recognised as one of the most important political rights. Given that participation in elections is recognised as one of the most important forms of the expression of citizens' political will, the State has a duty to ensure that the right to vote is exercised in practice without unjustified restrictions.

The Ministry of Justice refers to the 2020 statement of the European Commission for Democracy through Law (Venice Commission) that restrictions on prisoners voting in local elections should be reviewed. Such restrictions exist in some Council of Europe countries, where prisoners have the right to vote in parliamentary elections but not in local government elections, on the grounds that prisoners are supposedly unaffected by local politics and do not belong to the local community.

At its meeting on 8 February 2022, the *Saeima* Public Administration and Local Government Committee decided to expand the electorate by providing for the right to participate in local council elections to all persons in prisons. Based on the above, the Ministry of Justice prepared and submitted to the *Saeima* proposals for amendments to the Law on the Election of Local Government Councils, which would extend postal voting to all voters, regardless of whether a voter who is arrested or serving a sentence in a prison is located inside or outside of the territory of their electoral district, thus ensuring equal opportunities and procedures for voting in local government council elections for all.

5. Other party to the proceedings – the Ombudsman – states that the contested provision does not comply with the first sentence of Article 101, Paragraph two of the Constitution.

The first sentence of Article 101, Paragraph two of the Constitution determines which persons are entitled to elect local governments in the procedure established by law. The term “full Latvian citizens and citizens of the European Union who permanently reside in Latvia” is used in the Latvian wording of this Article to designate the circle of persons who have the right to vote and elect local governments. In determining the persons who are entitled to elect a specific local government council, this sentence is to be interpreted in the light of the provision “as provided for by law” contained in Article 101, Paragraph one of the Constitution. The persons who have the right to vote in local government elections or whose right to vote is restricted are defined by the Law on the Election of Local Government Councils. The legislator is entitled to introduce such restrictions as it deems necessary, appropriate and proportionate in a democratic society. However, the restrictions must be proportionate to the objective pursued by the legislator. The principle of proportionality states that when public authorities restrict the rights and lawful interests of a person, a reasonable balance must be struck between the interests of the person and those of the State or society.

In the opinion of the Ombudsman, the contested provision has been adopted in accordance with the procedure established by the Constitution and the Rules of Procedure of the *Saeima*. When assessing the legitimate aim of the restriction, the Ombudsman notes that it is not clear from the *Saeima*'s reply what this aim actually is. In the opinion of the Ombudsman, it is not possible to establish in the present case that the restriction of the fundamental right established by the contested provision protects an important public

interest and that this restriction has a legitimate aim. However, denying political rights to a prisoner may be consistent with the legitimate aims of preventing crime and strengthening civic responsibility, together with respect for the rule of law and the proper preservation of the democratic order. However, this measure cannot be applied automatically, otherwise it would not comply with the requirement for proportionality.

Neither the Law on the Election of the *Saeima* nor the Election to the European Parliament Law prevents persons serving sentences in prison from taking part in the elections. The only elections for which such a restriction is imposed are local government elections. If the legislator's aim was to restrict the political rights of persons on the basis of their criminal record, such a restriction should apply to all elections in order to comply with the prohibition of unequal treatment.

Convicted persons who have committed a criminal offence, a less serious crime or a serious crime, may be sentenced to a term of deprivation of liberty shorter than the four-year term of the local government convocation. Persons sentenced deprivation of liberty are also subject to the right to early release on parole provided for in Section 61 of the Criminal Law if the circumstances set out in that Section occur.

After serving their sentence or being released early, convicts return to the local government where they have or had their declared place of residence, where their family members live or where they own real estate. The responsibility for providing support to persons released from prison lies with local governments – their social services and social workers. This assistance provided by the local government and the extent of it may be important for released persons, and persons in custody may assess in the electoral process whether the parties' programmes include support for the protection and representation of their interests. Similarly, persons in prisons may also be interested in voting for political forces whose programmes include proposals that would have a positive impact on the lives of family members and relatives of such persons in that local government, as well as on the real estate owned by such persons in the local government. The relationship of trust and cooperation between the local government and the convicted person should be established and maintained permanently, not only after release from prison, therefore the Ombudsman considers that it is in the public interest not to restrict the right of convicted persons to participate in local government elections.

6. Other party to the proceedings – the Central Election Commission – points out that the contested provision has been uniformly applied in all local government elections

since 1994. The question of whether the right to vote should be granted to persons serving sentences in prison is a matter for the legislator to decide.

Since 1997, the Central Election Commission has not received any applications from persons who indicated that they are serving sentence in a prison asking for the opportunity to vote in local government elections, but it has received applications requesting an explanation as to why such persons have not been given that opportunity. The Central Election Commission responded to such applications that according to the contested provision, the person concerned was not entitled to vote in the elections to the local government council.

7. Other party to the proceedings – the Prison Administration – considers that, although the right to vote is subject to restrictions, the restrictive provisions must not be such as to impede the substantive exercise of that right. Restrictions must be prescribed by law, serve a legitimate aim and be proportionate.

The Prison Administration also agrees with the *Saeima's* reply that the electoral process is evolving, gradually reducing the restrictions on the right to vote in local government elections, and that the legislator regularly improves the regulation governing local government elections.

The Prison Administration points out that none of the convicted persons has applied to the prison administrations with an application requesting the possibility to vote in the local government council elections. However, the Prison Administration received one application from a convicted person between 2017 and 16 March 2022, in which they complained that they were denied the possibility to vote in the Riga City Council elections while in a prison.

8. Other party to the proceedings – a representative of Latvia before international human rights institutions – points to the case law of the ECHR and UN Human Rights Committee's general conclusions in relation to the right of persons to free elections, which could be of significance when assessing the compliance of the contested provision with the first sentence of Article 101, Paragraph two of the Constitution.

The right to free elections is enshrined in Article 3 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). Issues related to restrictions on the right of persons to free local government elections are outside the scope of Article 3 of Protocol 1 to the Convention,

since according to the case law of the ECHR, local governments are not a legislative power in the Latvian legal system. Accordingly, that provision would not be applicable in the present case and the findings of the case law of the ECHR interpreting the right to free elections, in so far as they concern the legislative power, are not directly applicable thereto. The case law of the ECHR interpreting the right to free elections could be applied to the present case only as general guidance, taking into account the principle enshrined in Article 89 of the Constitution, according to which the Convention establishes only a minimum level of protection of human rights, allowing States to determine a higher level of protection for human rights at the national level, including in their constitutions.

Issues relating to restrictions on the right of persons to free local government elections fall within the scope of Article 25(b) of the International Covenant on Civil and Political Rights (hereinafter –the Covenant). The conclusions of the UN Human Rights Committee's case law, which are derived from the interpretation of Article 25 of the Covenant, apply to the present case. According to Article 25(b) of the Covenant, everyone has the right to participate in local government elections, however, this right is not absolute, and States have the right to restrict it, provided that the restriction is prescribed by law, is directed towards the achievement of a legitimate aim, and is proportionate. So far, the UN Human Rights Committee has not considered cases similar to the present case, but in “Yevdokimov and Rezanov v. Russian Federation”, referring to the judgment of the ECHR in “Hirst v. the United Kingdom (No. 2)”, the UN Human Rights Committee concluded that the restriction on persons serving a custodial sentence to vote in legislative elections was not a proportionate restriction on the rights of the individual.

Although the established practice of the UN Human Rights Committee has not unequivocally concluded that a restriction preventing persons serving a custodial sentence from voting in local government elections would violate Article 25(b) of the Covenant, having assessed the previous practice and methodology of the UN Human Rights Committee and the scope of Article 25 of the Covenant, the Latvian representative to the international human rights institutions considers that the conclusions of the UN Human Rights Committee regarding the right to elect the legislator could also be applied to local government elections. Namely, taking into account the role and competences of local governments in the Latvian legal system, the Latvian representative to international human rights institutions concludes that if the UN Human Rights Committee does not recognise considerations on crime prevention as sufficient to justify restrictions on the right to vote in legislative elections, these considerations may be even less sufficient to justify restrictions on the right to vote in local government elections.

Finally, there may be grounds for concluding that the legislator's discretion in determining whether persons serving a custodial sentence have the right to vote in local government elections is narrow. This follows from the argument put forward by the *Saeima* that the adoption of the contested provision was a political decision, the conclusions of the Constitutional Court in Case No 2021-23-01, as well as a systemic assessment of the place of the contested provision in the Latvian legal system and conclusions drawn in the case law of the ECHR and the practice of the UN Human Rights Committee.

9. Other party to the proceedings – *Mg. iur.* Ērika Gribonika – holds that the contested provision does not comply with the first sentence of Article 101, Paragraph two of the Constitution.

Mg. iur. Ērika Gribonika pointed out that the case under consideration was different from Case No 2021-23-01 examined by the Constitutional Court previously, i.e., arrest is a security measure involving deprivation of liberty. It is a preventive coercive measure to be applied before the final ruling enters into force. As the UN Standard Minimum Rules for the Treatment of Prisoners emphasise, unconvicted prisoners should be presumed innocent and treated as such. Deprivation of liberty as a punishment is imposed on persons who have been found guilty of a criminal offence in accordance with the procedure laid down in the Criminal Procedure Law. Although the two groups of persons in question are both located in prison, they are mutually distinguishable as being in different circumstances. This has also been recognised in the case law of the Senate, namely: it follows from the difference in objectives that the arrest of a person and the serving of a sentence of deprivation of liberty are two distinct legal situations. The cases in which and the extent to which the fundamental rights of such persons may be restricted may therefore differ.

However, every person in a prison (suspects and accused as well as convicted persons) must enjoy the same fundamental human rights enshrined in the Constitution as persons outside prisons. Thus, it should be assessed whether in order to achieve the purpose of the punishment of convicted prisoners and to ensure order in the place of imprisonment, it is necessary and therefore justifiable that these persons – unlike persons under arrest – are restricted in their active right to elect the local government.

The restriction on the participation of persons sentenced to deprivation of liberty in local government elections contained in the contested provision is most likely related to practical considerations – the need for additional resources in the event that these persons

should be provided with the possibility to exercise their active right to vote. However, this circumstance in itself does not constitute a legitimate aim of the restriction of this fundamental right. It must therefore be concluded that the restriction of fundamental rights established by the contested provision does not have a legitimate aim.

The obligations assumed in ratifying the Covenant to ensure the effective exercise of the right to vote in local government elections must be read in conjunction with Article 2 of the Covenant, which prohibits the exclusion of a person from participation in elections solely on the basis of their status. Only for objective and sensible reasons may a person be denied the right to vote. It is undeniable that in certain cases, in light of the gravity and nature of the offence committed, the personality and behaviour of the offender, it may be necessary to restrict the right to vote of a person serving a prison sentence in the interest of protecting public security and achieving the purpose of the sentence. However, restrictions on the right to vote in local government elections must also be directly related to the basis on which the person was found guilty of a criminal offence.

Under the Criminal Law, a court may impose on a person a restriction of rights not provided for in the provisions of the Criminal Law as an additional sanction. This implies that the law provides for a mechanism according to which, in individual cases, when it is necessary to restrict a person's rights to achieve an objective defined in Article 116 of the Constitution, including the right to elect a local government council, the person may be subjected to the relevant restriction along with the penalty depriving them of liberty. Such an arrangement would meet both the requirements of the Covenant and the preconditions underlined by the case law of the ECHR for restricting the right to participate in parliamentary elections.

The main purpose of a sentence involving imprisonment is to protect society against crime. This can only be achieved if the period of imprisonment is used to promote, as far as possible, the ability of convicted persons to reintegrate into society after their release, so that they are able to respect the law and lead a self-sufficient life. This means that a person in prison should, among other things, be able to actively follow, form and express their views on the political order. This would ensure that the convicted person can effectively exercise their political rights after leaving prison, too. The contested provision does not allow such a possibility with regard to developments in the local government.

Concluding Part

10. First sentence of Article 101, Paragraph Two of the Constitution provides: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia.”

The Constitutional Court has concluded that the right to vote is recognised as one of the most important political rights (*cf. Judgment of the Constitutional Court of 5 March 2003 in Case No2002-18-01, Concluding Part, paragraph 1*). This right ensures the representation of citizens in the activities of national and local governments and is one of the cornerstones of a democratic state. Every citizen's right to vote matters. Every citizen's vote is a sign of respect and civic responsibility towards their country. Every citizen must be able to exercise their right to vote, and the state must ensure that the right to participate in local government council elections is practicable without unjustified restrictions (*see Judgment of the Constitutional Court of 30 March 2022 in Case No 2021-23-01, paragraph 20.3*).

A prisoner also enjoys the same fundamental human rights as other persons, as enshrined in the Constitution. However, these may be limited in accordance with the purpose of imprisonment (*see Judgment of the Constitutional Court of 15 January 2021 in Case No 2020-21-01, paragraph 9.1*).

10.1. When specifying the content of fundamental rights enshrined in the Constitution, Latvia's international human rights obligations must be taken into account. This follows from Article 89 of the Constitution which aims to achieve harmony of the human rights provisions enshrined in the Constitution with the provisions of international law (*see Judgment of the Constitutional Court of 23 May 2022 in Case No 2021-18-01, paragraph 25.1*).

The first sentence of Article 101, Paragraph two of the Constitution, *inter alia*, must be specified in conjunction with Article 25 of the Covenant.

Article 25 of the Covenant provides: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors [..]”.

In interpreting Article 25 of the Covenant, the UN Human Rights Committee has indicated that the conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers the formulation and implementation of policy at international, national, regional and local levels. And the right to vote must be

established by law and may be subject only to reasonable restrictions (*see: UN Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25 of the Covenant on Civil and Political Rights), 12 July 1996, CCPR/C/21/Rev.1/Add.7, paras 5, 10*).

The Council of Europe Commission for Democracy through Law (Venice Commission) has stated that the most important right for democracy is the right to universal, equal, direct, secret and free suffrage. However, in considering the restrictions on prisoners for voting in local government elections, the Commission concluded that such restrictions should be reconsidered (*see Report CDL-AD(2020)023 of the Council of Europe Commission for Democracy through Law (Venice Commission) of 8 October 2020, paragraphs 67 and 266*).

The preamble to the European Charter of Local Self-Government (hereinafter – the Charter) recognises that local authorities are one of the main foundations of any democratic regime (*cf. Judgment of the Constitutional Court of 12 March 2021 in Case No 2020-37-0106, paragraph 21.2*). Also according to Article 3 of the Charter, local self-government denotes the right and the ability of a local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right is exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of equal, direct and universal suffrage.

Thus, it can be concluded that in accordance with the principle of universal suffrage enshrined in the international instruments binding on Latvia, a full citizen of Latvia has the right to elect a local government council.

10.2. The persons who have the right to elect a local government council or to whom this right is restricted are specified in the Law on the Election of Local Government Councils.

According to Section 5, Paragraph one of the Law on the Election of Local Government Councils, the persons who have the right to elect the council are a citizen of Latvia and a citizen of the European Union who is not a Latvian citizen but who has been registered in the Register of Natural Persons. Paragraph two of this Section provides that such person has the right to vote who has reached 18 years of age on the election day, is registered in the electoral register and has been registered at his or her place of residence in the administrative territory of the relevant local government for at least 90 days before the election day, or such person who owns immovable property which is registered in the administrative territory of the relevant local government in accordance with the procedures specified by law and to whom any of the restrictions referred to in Section 6 of this Law

does not apply. Section 6 of the Law defines the persons who are not eligible to elect a local government council in Latvia. Pursuant to Clause 2 of this Section, the persons who do not have the right to elect the council include persons serving sentences in places of deprivation of liberty and pursuant to Clause 3, persons who do not have the right to vote in the Member State of the European Union of which they are citizens. Thus, a Latvian citizen serving a sentence in a prison does not have the right to elect a local government council.

The Applicant is a citizen of Latvia, and at the time when the local government elections of 5 June 2021 were held, they had been convicted by a court judgment which had entered into force and was serving their sentence in a place of deprivation of liberty – Jēkabpils prison. Therefore, they were subject to the restriction of the right laid down in Section 6, Clause 2 of the Law on the Election of Local Government Councils. The Central Election Commission also indicated that according to the contested provision, persons serving sentences in prison do not have the right to vote in elections to the local government council (*see Case file, vol. 1, p. 44*).

Thus, the contested provision denied the Applicant the right to vote in the local government council elections held on 5 June 2021.

The contested provision thereby entails a restriction of the fundamental right enshrined in the first sentence of Article 101, Paragraph two of the Constitution for a person serving a sentence in a prison.

11. The right to participate in the local government council elections enshrined in the first sentence of Article 101, Paragraph two of the Constitution may be restricted in cases provided for by law. This means that the Constitutional Court must assess whether the restriction is justified, i.e.: 1) it is established by law; 2) it has a legitimate aim; 3) it is proportionate to that legitimate aim (*see Judgment of the Constitutional Court of 5 March 2003 in Case No 2002-18-01, Concluding Part, paragraph 3*).

12. To assess whether the restriction of fundamental rights contained in the contested provision has been established by a law adopted in due procedure, the Constitutional Court must review:

1) whether the law was adopted in compliance with the procedures provided for in laws and regulations;

2) whether the law has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;

3) whether the wording of the law is sufficiently clear to allow a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences

of the application thereof (*see, e.g., Judgment of the Constitutional Court of 11 June 2021 in Case No 2020-50-01, paragraph 15*).

The restriction of fundamental rights must be established in the legislative process which complies with the principle of good lawmaking (*see Judgment of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 15*). However, only substantial breaches of procedure are grounds for recognising that the adopted act does not have legal force (*see Judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraphs 18.1 and 18.5*).

12.1. Section 6, Clause 1 of the City Council, District Council and Parish Council Election Law, adopted on 13 January 1994, provided that persons serving sentences in places of deprivation of liberty were not eligible to vote. The above-mentioned provision was reworded several times maintaining this prohibition – by the Law of 6 April 2000 on Amendments to the City Council and Parish Council Election Law and the Law of 11 November 2004 on Amendments to the City Council, Municipality Council and Parish Council Election Law.

The contested provision was adopted in its current wording by the Law of 11 November 2004 on Amendments to the City Council, Municipality Council and Parish Council Election Law. The Law was reviewed by the *Saeima* in three readings, proclaimed in the official gazette *Latvijas Vēstnesis* No 187 on 25 November 2004 and entered into force on 26 November 2004.

The parties to the case have not raised any objections to the procedure of adoption and proclamation of the contested provision. The parties also consider that the wording of the contested provision is sufficiently clear. The Constitutional Court also has no doubt that the contested provision was adopted and proclaimed in accordance with the procedure established by the Constitution and the Rules of Procedure of the *Saeima* and is formulated sufficiently clearly.

Thus, the contested provision has been adopted and made publicly available in accordance with the requirements of laws and regulations, as well as its wording is sufficiently clear to allow a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of the application thereof.

12.2. According to the Applicant, the contested provision is contrary to the principle of good lawmaking, because the legislator had not reviewed its compliance with the Constitution, taking into account the judgments of the Constitutional Court and the ECHR. They believe that, following the judgment of the Constitutional Court of 5 March 2003 in Case No 2002-18-01, “On Compliance of Section 2, Clause 2 of the Law on the Election of the *Saeima* with Articles 6, 8 and 91 of the Constitution of the Republic of Latvia”

(hereinafter – Judgment in Case No 2002-18-01) and the judgment of the ECHR of 6 October 2005 in the case “Hirst v. the United Kingdom (No. 2)”, the legislator should have revised the Law on the Election of the *Saeima*, and the Law on the Election of Local Government Councils should have been revised as well. In particular, the Law on the Election of Local Government Councils should have also provided for a special procedure for voters serving sentences in places of deprivation of liberty to participate in local government elections.

In “Hirst v. the United Kingdom (No. 2)”, the ECHR assessed whether the prohibition on convicted persons serving sentences in a prison from taking part in legislative elections is compatible with Article 3 of Protocol 1 to the Convention. As it is explicitly stated in the aforementioned provision and as it follows from the case law of the ECHR, for example, its decision of 11 October 2018 in the case “Lembergs v. Latvia”, Article 3 of Protocol 1 to the Convention does not apply to participation in local government elections such as the election of the local government council in Latvia. Latvia's representative before international human rights institutions has also pointed out that participation in local government elections does not fall within the meaning of “choice of legislature” contained in Article 3 of Protocol 1 to the Convention (*see Case file, vol. 1, p. 67 and 69*).

Although in “Hirst v. the United Kingdom (No. 2)” the ECHR analysed the prohibition for persons serving a sentence in a prison to participate in legislative elections, it should be assessed whether and to what extent the findings of the ECHR in this case could be applied to the participation of such persons in local government council elections in Latvia. This should be examined by assessing the legitimate aim of the restriction on the fundamental rights of these persons and its compliance with the principle of proportionality.

In turn, the judgment in Case No 2002-18-01 declared unconstitutional the restrictions of the right to vote which provided that suspects, accused persons and persons on trial were not elect the *Saeima* if they were subject to arrest as a security measure. However, being under arrest and serving a sentence of deprivation of liberty are two different legal situations. Namely, arrest is a security measure imposed on a suspect or an accused, and in such a case these persons are protected by the principle of presumption of innocence (*cf. Judgment of the Constitutional Court of 8 June 2022 in Case No 2021-40-0103, paragraph 11*). In turn, deprivation of liberty is a sentence imposed on a person who has been found guilty of a criminal offence by a court and in accordance with the law.

The Constitutional Court did not establish any significant violations of the legislative procedure in the process of adopting the contested provisions in the *Saeima*.

Therefore, the restriction of fundamental rights contained in the contested provision is established by a law adopted in due procedure.

13. Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, i.e., the restriction must be imposed for the sake of important interests – a legitimate aim (*see, e.g., Judgment of the Constitutional Court of 13 October 2015 in Case No 2014-36-01, paragraph 18*). The Constitutional Court must assess whether such a restriction has a legitimate aim, taking into account the current level of democratic development of society and the State (*cf. Judgment of the Constitutional Court of 29 June 2018 in Case No 2017-25-01, paragraph 20.1*).

13.1. The Applicant submits that the restriction of the fundamental right established by the contested provision does not have a legitimate aim. The purpose of the contested provision is likely aimed at facilitating the work of local election commissions and prison administrations by relieving them of the obligation to organise local government elections for voters in prison. However, the aim of facilitating the work of the executive power is not in itself compatible with any of the objectives referred to in Article 116 of the Constitution.

The Ombudsman, too, is of the opinion that it is not possible to establish in the present case that the restriction of fundamental rights established in the contested provision would protect any important public interests (*see Case file, vol. 1, p. 56*).

In her opinion, *Mg. iur.* Ērika Griboņika indicated that the restriction of fundamental rights established in the contested provision does not have a legitimate aim. This restriction is likely to be due to practical considerations – the need for additional resources in the event that convicted persons in prisons should be able to exercise their active right to vote in local government elections. Although the legislator may take this necessity into account, this circumstance in itself cannot be regarded as a legitimate aim for which persons serving sentences in prison should be denied the right to elect a local government council (*see Case file, vol. 1, p. 77-78*).

In the Constitutional Court proceedings, the obligation to present and substantiate the legitimate aim of restrictions of fundamental rights lies, first of all, with the institution that issued the contested provision, which in this particular case is the *Saeima* (*see, e.g., Judgment of the Constitutional Court of 12 February 2020 in Case No 2019-05-01, paragraph 20*). In its reply, the *Saeima* notes that the regulation according to which persons serving sentences in a prison do not have the right to elect the local government council was adopted by the 5th *Saeima*. The adoption of such a regulation was a political decision of the time. Thus, it does not follow from the reply what exactly is the legitimate aim of the restriction of the fundamental right contained in the contested provision.

The Constitutional Court has repeatedly recognised that if the *Saeima's* reply fails to indicate what the legitimate aim of the according restriction is, the court itself is obliged to

objectively assess all the circumstances of the case and establish the existence of such aim or – on the contrary – the lack thereof (*see, e.g., Judgment of the Constitutional Court of 8 June 2007 in Case No 2007-01-01, paragraph 23, and Judgment of 3 April 2008 in Case No 2007-23-01, paragraph 15*).

13.2. By the Law of 11 November 2004 on Amendments to the City Council, Municipality Council and Parish Council Election Law, the provision restricting the right of persons serving sentences in a prison to elect the local council was reformulated in the new wording in force today. The annotation of the draft law in question states only that “the circle of subjects entitled to participate in local government elections is expanded, and the restrictions on active and passive voting rights are clarified”. Thus, the annotation of the draft law in question does not indicate what the legitimate aim of this restriction is.

The local government council decides on all the most important issues in the respective local government (*see Judgment of the Constitutional Court of 29 June 2018 in Case No 2017-32-05, paragraph 21*). A local government is a local authority established by the citizens living in a certain territory and operating in that territory (*see Decision of the Constitutional Court of 16 April 2008 on Termination of Court Proceedings in Case No 2007-21-01, paragraph 14*).

The contested provision restricts the right to participate in the elections of local government council to any person serving a sentence in a prison. The Constitutional Court has also recognised that deprivation of liberty – compulsory imprisonment of a person – is a form of punishment involving the restriction of a person's fundamental rights, primarily the right to liberty. The convicted person is isolated from their usual environment, lifestyle and social contacts. The restrictions imposed in relation to the enforcement of a custodial sentence cause physical and psychological strain and hardship for the sentenced person. As part of the enforcement regime, the convicted person is subject to the restrictions laid down in the laws and regulations. These restrictions may not be greater than the nature of the sentence imposed and the regime of execution of the sentence requires (*see Judgment of the Constitutional Court of 6 February 2006 in Case No 2005-17-01, paragraph 6*).

Article 10(1) of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Meanwhile Article 10(3) of the same provides that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment, and their dignity must be guaranteed in the same way as that of free persons (*cf.: General Comment No. 21:*

Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty (Art.10):10/04/92, Human Rights Committee, para. 3).

The Constitutional Court has recognised that Recommendation Rec(2006)2 of 11 January 2006 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (hereinafter – the European Prison Rules) was adopted so that the laws and practices of the Council of Europe Member States can be guided by them. Although these provisions are not legally binding, the regulation contained therein can be recognised as a source of a recommendatory, yet sufficiently authoritative nature, which suggests the optimal model of action in solving a particular problem to the States (*cf. Judgment of the Constitutional Court of 14 September 2005 in Case No 2005-02-0106, paragraph 16, and Judgment of 24 October 2019 in Case No 2018-23-03, paragraph 18.2*). Paragraph 102.2 of the European Prison Rules states that imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners must not aggravate the suffering inherent in imprisonment. Similarly, persons deprived of their liberty retain all their rights, except those they are legally deprived of by a decision imposing a sentence or imprisonment. Life in prison should be as close as possible to life outside prison. In addition, any form of imprisonment should be organised in a way to help persons deprived of their liberty to reintegrate into society after their release.

The contested provision determines a general and automatic restriction of the fundamental right to elect local government for a group of persons, based solely on the fact that they serve a custodial sentence in prison. Neither this restriction nor its necessity has been substantially reviewed since 13 January 1994. The Constitutional Court has already recognised that the legislator is obliged to periodically consider whether a given legal regulation is still effective, appropriate and necessary and whether it should be improved in any way (*see, e.g., Judgment of the Constitutional Court of 10 March 2022 in Case No 2021-24-03, paragraph 31.2*). Any restrictions of the right to vote must be assessed also in the context of democratic development of the State. Namely, the necessity for these restrictions must also be periodically reconsidered, balancing them against the degree of the democratic development of society and the State at the time. It follows from the decisions of the Constitutional Court adopted after the initial restriction of the right to elect a local government council to persons serving sentences in a prison as well as Latvia's international human rights obligations that, in general, persons serving sentences in a prison should not be subject to restrictions greater than those required by the nature of the criminal offence committed and the nature of the sentence imposed. The contested provision does not take into account whether there is a detectable and sufficient link between restriction on suffrage and the criminal offence committed by the person in question, and the circumstances of the

case. Moreover, a restriction on suffrage for every person serving a sentence in a prison does not motivate the persons in question to participate civically and reintegrate into society after their release. Such restriction on suffrage is also in contradiction with the aim of criminal punishment, namely, to socially rehabilitate the punished person.

The suffrage guaranteed by the first sentence of Article 101, Paragraph Two of the Constitution has decisive importance in establishing and retaining such efficient and meaningful democratically elected institutions which are guided by the principles of the rule of law. Universal suffrage is a principle corroborated both in the legal system of Latvia and international law, and it implies that it is fundamental for each citizen to exercise their voting rights without unfounded restrictions. Automatic exclusion of any group of society serving a custodial sentence from participating in local government elections contradicts the principle of universal suffrage.

Thus it is not possible to establish in the present case that the general and automatic restriction of the fundamental rights of the persons serving a sentence related to deprivation of liberty would protect any significant and important interests of society.

Thus, the restriction of fundamental rights contained in the contested provision does not have a legitimate aim and it does not comply with the first sentence of Article 101, Paragraph two of the Constitution.

14. In accordance with Section 32, Paragraph three of the Constitutional Court Law, a legal provision that the Constitutional Court has declared not conforming to a provision of higher legal force shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, unless the Constitutional Court has determined otherwise. Section 31, Clause 11 of this Law, in turn, provides for the right of the Constitutional Court to indicate in its judgement the moment with which such a provision is revoked.

The Constitutional Court has held that in deciding on the moment when the contested provision is revoked, it must bear in mind that its task is to prevent the infringement of the Applicant's fundamental rights as much as possible (*see Judgement of the Constitutional Court of 16 December 2005 in Case No 2005-12-0103, paragraph 25*). Moreover, the court must also ensure that the situation that might arise from the moment when the contested provision loses its force does not lead to new infringements of the fundamental rights established in the Constitution and does not cause significant damage to the interests of the State or society (*see, e.g., Judgment of the Constitutional Court of 17 December 2020 in Case No 2020-18-01, paragraph 25*).

The applicant requests that the contested provision be declared null and void with regard to them from the date of the infringement of their fundamental rights – 5 June 2021, i.e. the date when they were denied the right to vote in the local government council elections. Only by declaring the contested provision null and void as from that date could the infringement of their fundamental rights be remedied. Thus, to eliminate, as far as possible, the adverse consequences caused to the Applicant by the contested provision, it must be declared void in respect of them from the moment of the infringement of their fundamental rights.

Substantive Part

On the basis of Sections 30-32 of the Constitutional Court Law, the Constitution Court

decided:

1. To declare Section 6, Clause 2 of the Law on the Election of Local Government Councils as not conforming to the first sentence of Article 101, Paragraph two of the Constitution of the Republic of Latvia.

2. In respect of person J, to declare Section 6, Clause 2 of the Law on the Election of Local Government Councils of the Republic of Latvia as not conforming to the first sentence of Article 101, Paragraph two of the Constitution of the Republic of Latvia and void from the moment when the infringement of the fundamental rights of the person concerned occurred.

The Judgment is final and not subject to appeal.

The Judgement shall enter into force as of the date of its publication.

Chairperson of the Court Hearing

Gunārs Kusiņš