

THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF LITHUANIA

DECISION

On the compliance of the decision of the Seimas of the Republic of Lithuania "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments", adopted on April 15, 1993, with the Constitution of the Republic of Lithuania

17 September 1993, Vilnius

The Constitutional Court of the Republic of Lithuania, composed from Justices of the Constitutional Court Algirdas Gailiūnas, Kęstutis Lapinskas, Zigmas Levickis, Vladas Pavilionis, Pranas Vytautas Rasimavičius, Stasys Stačiokas, Teodora Staugaitienė, Stasys Šedbaras and Juozas Žilyls,

the secretary of the hearing - Rolanda Stimbirytė,

the petitioner - Petras Algirdas Miškinis, representative of the group of the members of the Seimas,

the party concerned - the Seimas representatives Juozas Bernatoniš and Nijolė Šidagienė,

pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of Law on the Constitutional Court, the Court in its public sitting conducted the investigation of Case No 2 subsequent to the petition submitted to the Court by a group of the Seimas members to investigate the conformity of the Seimas decision, adopted on April 15, 1993 "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" with the Constitution of the Republic of Lithuania.

The Constitutional Court

e s t a b l i s h e d :

Subsequent to the suggestions made by the Government of the Republic of Lithuania as well as the Seimas Committee for local governments, the Seimas of the Republic of Lithuania, by the decision "On the commission for the investigation of the situation in Vilnius City Council and Board", adopted on February 3, 1993, formed the commission and obligated it to present their conclusions to the Seimas until 31 March, 1993. The commission has taken two alternative decisions:

1. Not to recommend the Seimas of the Republic of Lithuania to dissolve Vilnius City Council and to resolve the issue of dismissing guilty officials from their respective posts.

2. To take measures for the dissolution of Vilnius City Council.

The Seimas Committee for local governments in the sitting on 22 March, 1993 considered the conclusions of the Commission, approved of them and appealed to the Seimas with the request to change the status of the Commission entitling it to the right of proposing the Seimas to dissolve Vilnius City Council.

The Seimas, pursuant to Article 123 of the Constitution of the Republic of Lithuania and Article 28 of the Law of

the Republic of Lithuania "On the Fundamentals of Local Government " as well as the Law "On Direct Administration on Local Government Territory" and on the basis of the conclusions of the Commission formed to investigate the situation in Vilnius City Council and Board, on April 15, 1993 adopted the decision "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments". The Seimas decided :

1. To dissolve Vilnius City Council of local government and to introduce direct administration on local government territory until the formation of the new Vilnius City Council.

In the time of direct administration on local government territory to suspend the validity of the Law of the Republic of Lithuania on Fundamentals of Local Government.

2. In conformity with Part 7 of Article 26 of the Law on Labour Contract, to dismiss from office Valentinas Šapalas, chairman of Vilnius City Council, Alvydas Karalius, deputy chairman of the Council, Vytautas Jasiulaitis, mayor of the city and Vidutis Kamaitis, deputy mayor of the city.

3. To charge the Government of the Republic of Lithuania with:

- (1) immediately appointing an authorised official of the Government on Vilnius territory and resolving the issues of transferring to him material values and documentation.

- (2) approving the appointment and salary lists of the staff of the Executive body of the authorised official.

4. To organize elections to Vilnius City Council until November 28, 1993.

5. To commission the Seimas Committee for Local Governments of the Republic of Lithuania until May 15, 1993 to draft the amendments to the laws of the Republic of Lithuania on the Fundamentals of Local Government and Elections to Councils of Local Government; and the Central Electoral Committee - to amend the procedure of the elections to councils of local governments prescribed by law and set the date for the elections to Vilnius City Council.

6. To present to the Prosecutor General of the Republic of Lithuania the material collected by the commission formed to investigate the situation in Vilnius City Council and Board.

(Parliamentary Record of the Seimas of the Republic of Lithuania, 1993, No 13-314).

The petitioner requests the Constitutional Court to investigate the conformity of the Seimas decision, dated April 15, 1993, "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" with the Constitution of the Republic of Lithuania. The request is based on the following legal motives:

1. The Seimas decision was passed in the violation of Part 2 of Article 69 of the Constitution of the Republic of Lithuania, as this decision was not adopted by majority vote of the Seimas members participating in the sitting.

2. The decision in its contents contradicts the provision established in Part 4 of Article 123 of the Constitution of the Republic of Lithuania which does not provide for the dissolution of the Council of local government. For the purpose of regulating the fundamentals and the procedure of the introduction of direct

administration, the Seimas should enact a law or coordinate the law adopted on December 27, 1992 "On Direct Administration on Local Government Territory" with the Constitution of the Republic of Lithuania. The above mentioned law was adopted at the time when the Provisional Basic Law was in force on the territory of the Republic of Lithuania.

3. The Seimas groundlessly relied on Article 28 of the Law on the Fundamentals of Local Government, promulgated on February 12, 1990, as the conclusions of the Commission did not specify which acts of the bodies of local government contradicted the Constitution of the Republic of Lithuania. Besides, there were no directives on the part of any authorised State bodies to terminate unlawful actions of the City Council.

Representatives of the party concerned, considering that the Seimas decision is in compliance with the Constitution of the Republic of Lithuania, suggested the following explanation to the Constitutional Court:

1. The Seimas in passing the decision relied on the Provisional Seimas Statute, which regulates the procedure of the enactment of the Seimas laws and other regulations. In conformity with provisions of the Statute, the number of the Seimas members participating in the sitting shall be established by the registration before voting. During the adoption of Part 1 105 Seimas members were registered, among them 53 members voted in favour of it, therefore, this part was adopted in full conformity with the established in the Seimas procedure. The Seimas members who observe evident violation of the Provisional Seimas Statute, did not take into consideration the procedure established in Article 98 of the Statute which provides for the right to demand further investigation of the case within no less than a week.

2. Article 3 of the Law on the Procedure of the Enforcement of the Constitution of the Republic of Lithuania establishes that provisions of the laws of the Republic of Lithuania which determine the status of the supreme institutions of State power and administration of the Republic of Lithuania as well as the status of deputies of local governments shall be effective until the elected Seimas decides otherwise. In conformity with this Article the conclusion is drawn that the Law on the Fundamentals of Local Government as a whole and its Article 28, taken separately, as well as the Law on Direct Administration on Local Government Territory are valid. It is established in these laws that the introduction of direct administration on local government territory is connected with the dissolution of the Council of local government. Nevertheless, the petitioner does not appeal to the Court according to the procedure prescribed by law to prove the compliance of these laws with the Constitution of the Republic of Lithuania.

3. Article 28 of the Law on the Fundamentals of Local Government provides for three legal cases of the dissolution of the Council of local government. Each of them, taken separately, can be a ground for the dissolution of the Council of local government. The conclusions of the Commission as well as their inseparable certificates contain data enough to prove constant and gross violations of laws committed by Vilnius City Council and other executive bodies, which disregard the demands of State bodies to

terminate unlawful acts. Vilnius City Council did not exercise control over the activities of executive bodies accountable to it.

The Constitutional Court  
holds that:

1. Pertaining to the compliance of the adoption procedure of the decision of the Seimas of the Republic of Lithuania "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" adopted on April 15, 1993, with the Constitution of the Republic of Lithuania.

Pursuant to Point 4 of Part 1 of Article 64 of the Law on the Constitutional Court, the Court examines a case concerning the compliance of a legal act with the Constitution of the Republic of Lithuania only according to the procedure of adoption which has been specified in the Constitution.

Article 69 of the Constitution of the Republic of Lithuania establishes the rules of law enactment. Part 2 of Article 69 establishes a universally recognized provision that laws shall be deemed adopted if the majority of the Seimas members participating in the sitting vote in favour thereof. The Constitution also establishes the rules of the Constitutional laws enactment and amendment or supplementing by a majority vote of two - thirds of the total number of the deputies. The Constitution of the Republic of Lithuania does not provide for other provisions concerning the adoption of laws or other acts of the Seimas. In the adoption of the Seimas decision in dispute the general rule established in Part 2 of Article 69 of the Constitution of the Republic of Lithuania had to be observed.

The Seimas is given the right by the Constitution of the Republic of Lithuania to establish concrete procedures of law enactment in accordance with law. At present these procedures are determined in the Provisional Statute of the Seimas. The number of Seimas members participating in the sitting is fixed at the beginning of the sitting by way of their registration or, upon the instruction of the Chairman of the Seimas, during the sitting. Subsequent to the evidence, the Constitutional Court has drawn the conclusions that the registration of the Seimas members was conducted immediately before voting Part 1 of the decision in dispute. The results of voting showed that Part 1 of the decision "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" was adopted by the majority vote of all the Seimas members participating in the sitting.

2. Pertaining to the compliance of the Seimas decision "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" with Article 123 of the Constitution of the Republic of Lithuania.

Article 152 of the Constitution of the Republic of Lithuania prescribes that the procedure for the enforcement of this Constitution and separate provisions thereof shall be regulated by Law of the Republic of Lithuania "On the Procedure for the Enforcement of the Constitution of the

Republic of Lithuania", which together with the Constitution of the Republic of Lithuania was adopted by referendum.

In compliance with Article 3 of this law, provisions of the laws of the Republic of Lithuania which determine the status of the supreme institutions of State power and administration of the Republic of Lithuania as well as the status of deputies and local governments shall be effective until the elected Seimas decides otherwise. Therefore, Part 1 of Article 123 of the Constitution of the Republic of Lithuania entitles Seimas to the right to introduce direct administration on local government territory in cases and according to the procedures provided by law, that are determined by Law "On the Fundamentals of Local Government", 12 February, 1990 and Law "On Direct Administration on Local Government Territory", 27 December, 1990.

Article 2 of the Law of the Republic of Lithuania "On Direct Administration on Local Government territory" establishes that direct administration is introduced on the dissolution of a respective local government Council, on the release from office officials appointed or elected to this post and on the suspension of the validity of the laws on local government.

The Seimas of the Republic of Lithuania is entitled to the right to apply these laws, to resolve the issue of the dissolution of the Council of local government, temporarily introducing direct administration and suspending the laws of local government on its territory. This procedure shall be changed by a new law.

The Seimas of the Republic of Lithuania while adopting the decision "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" which provides for the following cases and procedures of the dissolution of Council of local government: if the activity of the bodies of local government contradicts the Basic Law of the Republic of Lithuania; if the bodies of local government grossly violate the laws of the Republic of Lithuania or constitutional rights of citizens, disregarding the demands of the authorized state bodies of the Republic of Lithuania to terminate illegal action. The Council of local government shall be dissolved by the motivated decision of the Seimas of the Republic of Lithuania adopted on the basis of the conclusions presented by the specially formed commission of the deputies of the Seimas.

The Commission formed to investigate the situation in Vilnius City Council and Board stated in their conclusions and suggestions that Vilnius City Council does not resolve the issue concerning the economic and strategic infrastructure of the city, does not effectively supervise the activities of the Board, does not have the conception of the city territory supervision for which reason the activities of the Council of People's Deputies are diminished, does not exercise control of the process of privatization, constant violations of the directives of the Government concerning the lease of uninhabited lodging can be observed, it rents plots of land on a non-competition basis and the organization of the privatization of the plots of land is insufficient. Some officials abusing their official position, have acquired or changed their flats. In the conclusions and suggestions it is specified that Vilnius

City Council and its Board have made violations of the financial discipline in establishing the tariffs of housing maintenance, did not ensure the supply of the citizens with hot water according to fixed timetables as well as other violations established in certificates No 4, No 5, No 6.

However, the Commission, having enumerated all the above mentioned violations, did not qualify them according to the provisions prescribed in Part 1 of Article 28 of the Law "On the Fundamentals of Local Government" as well as did not shape the conclusion concerning the dissolution of Vilnius City Council, presenting the Seimas only two alternative decisions.

The Seimas of the Republic of Lithuania in the decision "On the dissolution of Vilnius City Council and some measures necessary to improve activities in local governments" did not specify legal motives, i.e. the decision does not specify which decisions and regulations of Vilnius City Council and local government contradict the law of the Republic of Lithuania and the constitutional rights of the citizens.

The Seimas, having adopted the unmotivated decision, violated the provision of Part 2 of the Law of the Republic of Lithuania "On the Fundamentals of Local Government", which is based on Article 123 of the Constitution of the Republic of Lithuania.

Pursuant to Article 102 of the Constitution of the Republic of Lithuania as well as Articles 53, 54, 55 and 56 of the Law on the Constitutional Court, the Constitutional Court has taken the following decision:

The Seimas decision, adopted on April 15, 1993, "On the dissolution of Vilnius City Council and some measures necessary to improve the activities in local governments" contradicts Article 123 of the Constitution of the Republic of Lithuania.

This decision of the Constitutional Court is final and shall not be appealed against.

The decision is promulgated on behalf of the Republic of Lithuania.

Justices of the Constitutional Court:

Algirdas Gailiūnas	Kęstutis Lapinskas
Zigmas Levickis	Vladas Pavilonis
Pranas Vytautas Rasimavičius	Stasys Stačiokas
Teodora Staugaitienė	Stasys Šedbaras
Juozas Žilys	