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JUDICIAL SAFEGUARDS OF MEMBERS' OF PARLIAMENT AND MUNICIPAL COUNCILLORS' COMPETENCE

Abstract. This article examines the judicial protection of the public-law competence of members of parliament and municipal councillors (hereinafter also – deputies). Its topicality arises from the fact that Latvian legislation does not provide a legal mechanism by which a deputy may individually safeguard his or her public-law competence. While the Latvian legal system offers remedies enabling deputies to defend their subjective rights as private persons, it does not regulate whether and how they may protect their subjective public rights, i.e. their competence.

Against this background, the Constitutional Court of the Republic of Latvia has adjudicated three cases in which this legal lacuna became evident. In these judgments, the Court articulated its perspective and developed an approach to ensuring effective legal protection, even in the absence of legislative amendments.

The article argues that constitutional courts can play a decisive role in filling such “white gaps” in the system of legal protection. By doing so, they ensure the comprehensive safeguarding of rights and maintain the balance of constitutional democracy, particularly in situations where the legislature delays in fulfilling its constitutional responsibilities.

The article’s contribution lies in conceptualising mandate-related competences as enforceable subjective public rights and in proposing effectiveness criteria – timeliness and enforceability – for judicial remedies in competence disputes where legislation is silent.

Keywords: member of parliament, municipal councillor, public competence, infringement, judicial review

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SĄDOWE GWARANCJE KOMPETENCJI POSŁÓW I RADNYCH MIEJSKICH

Streszczenie. Artykuł analizuje sądową ochronę kompetencji publicznoprawnych posłów i radnych gminnych. Aktualność problematyki wynika z faktu, iż ustawodawstwo łotewskie nie przewiduje mechanizmu prawnego, dzięki któremu deputowany mógłby indywidualnie chronić swoje kompetencje publicznoprawne. Choć system prawny Łotwy zapewnia środki ochrony umożliwiającej deputowanym obronę ich praw podmiotowych jako osób prywatnych, nie reguluje on kwestii, czy i w jaki sposób mogą oni chronić swoje publiczne prawa podmiotowe, tj. kompetencje.

Na tym tle Trybunał Konstytucyjny Republiki Łotewskiej rozpoznał trzy sprawy, w których ujawniła się ta luka prawna. W wydanych orzeczeniach Trybunał przedstawił własne stanowisko oraz wypracował podejście zmierzające do zapewnienia skutecznej ochrony prawnej, nawet przy braku zmian legislacyjnych.

Artykuł dowodzi, że trybunały konstytucyjne mogą odgrywać decydującą rolę w wypełnianiu takich „białych plam” w systemie ochrony prawnej. W ten sposób gwarantują one kompleksową ochronę praw oraz utrzymanie równowagi demokracji konstytucyjnej, zwłaszcza w sytuacjach, gdy ustawodawca opóźnia się w wypełnianiu swoich konstytucyjnych obowiązków.

Wkład artykułu polega na ujęciu kompetencji związanych z mandatem jako podlegających ochronie, wykonalnych publicznych praw podmiotowych oraz na zaproponowaniu kryteriów skuteczności – terminowości i wykonalności – dla środków ochrony sądowej w sporach kompetencyjnych w sytuacji, gdy ustawodawstwo milczy.

Słowa kluczowe: poseł, radny miejski, kompetencja publiczna, naruszenie, kontrola sądowa

1. INTRODUCTION

Effective legal protection is the central pillar of the legal order of any democratic state. This notion encompasses both institutional access to the courts and the functional effectiveness of legal remedies. The protection of fundamental rights is one of the indispensable elements of a democratic state. For this reason, its full expression must remain at the core of a democratic polity, and in a truly democratic state it is difficult to imagine circumstances in which an individual would not be guaranteed access to a court.

At the same time, an integral element of a democratic state is popular sovereignty. A democratic state is characterized by the ability of its people to govern their own state. The people constitute both the foundation of legitimacy and the source of state power (Stern 1984, 594; Ziemele, Osipova 2024, 677, 679). The principle that power belongs to the people necessarily raises the question of how that power is to be exercised and administered.

In a democracy, decisions are taken through the expression of free will. Yet the corollary of free will is the absence of unanimity: the more individuals participate in the formation of a common position, the less likely it is to be unanimous. Decision-making in a democratic state is therefore made possible by majority rule (Sodan, Ziekow 2020, 63). However, a majority does not signify a static entity;

those who form the majority in one decision may constitute a minority in another, and vice versa.

A democratic state is distinguished by its attitude towards minorities: by guaranteeing their right to participate in deliberations, and – when their rights are infringed – by providing them with the opportunity to challenge the legality of majority decisions and to obtain effective redress for the violations sustained.

This article addresses the following research questions: (1) whether and under what conditions the public-law competence of a representative mandate may qualify as an enforceable subjective public right; (2) which judicial remedies may provide effective protection of such competence in the absence of explicit legislative regulation; (3) how the Constitutional Court's case-law has reshaped the remedial landscape for municipal councillors and members of parliament in Latvia; and (4) what minimum requirements of effectiveness (including timeliness and enforceability) should be met to ensure that judicial protection is not merely theoretical. The analysis employs the doctrinal legal method and case-law analysis, moving from specific judicial decisions to general conclusions regarding legal protection in competence disputes.

2. PROTECTING THE COMPETENCE OF MUNICIPAL COUNCILLORS

2.1. Introduction to the problem field

Until 2018, the prevailing view in administrative litigation was that an administrative court lacked jurisdiction to adjudicate disputes between a municipal councillor and the municipal council (Supreme Court of Latvia 2018). According to Articles 2 and 121 of the Administrative Procedure Law, administrative courts are entrusted with ensuring the observance of human rights in specific public-law relations between the state and a private individual. Their jurisdiction covers the actions of the executive branch in such relations, typically manifested in the form of an administrative act, factual conduct, or a public-law contract (Administrative Procedure Law). Consequently, unless a municipal councillor acted as a private individual in legal relations with the council, he or she was not recognised as having the right to seek judicial protection of infringed public-law competence through administrative proceedings.

A municipal councillor, however, does not act as a private individual in relations with the council. Both the councillor and municipal organs (such as the council or its committees) operate within the sphere of public law and the framework of public administration. Each organ performs specific functions and is endowed with corresponding rights to carry them out. In exercising these rights, disputes may arise regarding their lawful use. Generally, such disputes in public administration would be resolved hierarchically by complaint to a higher

authority. Yet no hierarchical relationship exists between a municipal councillor and a municipal organ: the councillor's status is grounded in the free representative mandate obtained through democratic elections. This excludes the possibility of councillors being subordinated to municipal organs, and therefore the law does not provide for such disputes to be resolved by appeal to a higher authority. Because the exercise of councillors' participatory rights and their legal relations with municipal organs take place within the sphere of public law and the framework of state administration, disputes between councillors and municipal organs are of an internal nature. Normally such disputes would be settled by a higher authority within state or self-government administration, but in this case no such authority exists, since municipalities constitute an institutionally specific subject of state administration.

A municipal councillor holds a specific public-law status. This status is determined by Article 101(2) of the Constitution and relevant legislation (Law on the Status of a Local Government Council Councillor; Law on Local Governments). A councillor exercises his or her rights without the need for special authorisation, relying solely on the mandate conferred by election. As the Constitutional Court has emphasised, under the relevant legal provisions a municipal councillor is a representative of the residents of the respective local government territory, representing them collectively. From this duty to represent the inhabitants' interests arises the free representative mandate. The performance of a councillor's duties and the exercise of his or her rights constitute the exercise of public power for the benefit of society.

These two features – the internal nature of the dispute and the public-law status of the councillor – exclude the possibility that a municipal organ, in relations with a councillor, would act through the issuance of an administrative act or that its conduct would fall under the concept of factual action. Thus, municipal council decisions affecting the exercise of councillors' participatory rights – such as refusal to place an item on the agenda of the council or a committee, refusal to provide requested information, or denial of the right to speak or vote in council meetings – do not qualify as administrative acts or factual conduct.

Since a councillor does not act as a private individual in relations with the council, but as a person exercising a public-law status (competence), administrative courts held that recourse to them was not available (Supreme Court of Latvia 2013). This position was confirmed as late as 2016 by the Supreme Court in a case where a municipal councillor had requested information from the council in order to exercise his competence, but the council had refused to provide it (Supreme Court of Latvia 2016). As a result, the competence of municipal councillors could not be protected against majority decisions.

2.2. The Constitutional Court's response

In 2018, the Constitutional Court examined a case concerning the legality of an order issued by the Minister supervising municipal activities, whereby the minister suspended a decision of a municipal council establishing council committees. The minister argued that the majority of the council had failed to respect the rights of minority councillors to participate in the committees in proportion to the election results and the number of mandates obtained. In certain committees, the number of councillors representing the ruling majority had been disproportionately increased. The Court found that the minister had no authority to suspend the operation of an individual legal act. Nevertheless, the Court provided a broader assessment of where and in what manner an individual municipal councillor could address infringements of his or her public-law competence and mandate rights (Constitutional Court of the Republic of Latvia 2018).

First, the Constitutional Court pointed out that the point of departure is the principle of a state governed by the rule of law. From this principle derives the requirement of effective protection of infringed rights. As early as 1999, the Constitutional Court had recognised that the principle of the rule of law entails the requirement that no legal norm or executive action that infringes an individual's rights may remain beyond judicial review (Constitutional Court of the Republic of Latvia 1999). Therefore, in cases of infringements of a councillor's rights, the principle of the rule of law requires that the councillor must have the practical possibility to enforce his or her rights, including the elimination of the infringement.

Second, the Constitutional Court concluded that a municipality is not a constitutional organ of state power and that the Court does not adjudicate disputes between municipalities and their councillors.

Third, the Constitutional Court analysed the legal relations between a municipal council and its councillors. It affirmed that the status of a councillor, together with the rights and obligations attached to it, is of a public-law nature. Accordingly, individual decisions of a municipal council or its institutions that affect the exercise of a councillor's subjective public rights are neither administrative acts nor factual conduct.

At the same time, the Court emphasised that although administrative acts and factual conduct are the classical objects of administrative court review, excluding certain forms of executive action and infringements of subjective rights from review, given the diversity of administrative action, would be contrary to the objectives set out in Article 2 of the Administrative Procedure Law. That provision requires comprehensive judicial review of executive actions and public-law relations, ensuring that subjective rights can be effectively protected in court proceedings. Accordingly, the Constitutional Court concluded that disputes concerning the exercise of a municipal councillor's subjective public rights, or the determination of their content and scope, fall within the jurisdiction of the administrative courts.

2.3. The impact of the Constitutional Court's judgment

Shortly after the Constitutional Court's judgment, the Administrative Cases Department of the Supreme Court overturned a lower administrative court's refusal to initiate proceedings and accept an application in which a municipal councillor contested the council's refusal to provide information necessary for the councillor's activities and to ensure equal access to the municipal information bulletin (Supreme Court of Latvia 2018).

Likewise, the Constitutional Court's ruling established legal certainty in cases concerning the protection of individual rights of municipal councillors in disputes with municipal councils regarding observance of the principle of proportionality in the composition of council committees (Supreme Court of Latvia 2024). At present, such disputes may be pursued individually by each councillor in administrative court, without the intervention of the supervisory ministry overseeing municipal legality. Moreover, it is now possible to obtain interim relief immediately, rather than only after years of litigation, by which time the councillor's term of office might already be nearing its end or have expired. Effectiveness of judicial protection in competence disputes must be assessed not only by formal access to a court, but also by the practical ability to restore the infringed competence within the relevant political term. For elected representatives, time is a strategic resource: if proceedings are excessively lengthy or if interim measures are unavailable, the mandate-related right may become moot before a final judgment is delivered. Therefore, the availability of interim relief and procedural timeliness is not merely a technicality but a key element of the rule-of-law requirement of effectiveness. Moreover, enforcement is integral to effective protection. A judgment that recognises an infringement but cannot be implemented in a manner restoring participation, access to information, or proportional representation in bodies of the council does not fully vindicate the mandate. In competence disputes, enforcement often requires institutional compliance rather than monetary compensation. This underscores the need for remedies that can produce organisational effects – such as orders to provide information, to place an item on the agenda where legally required, or to reconstitute committees in line with proportionality – so that the representative mandate can be exercised in substance, not only in theory. The judgment also has broader significance: opposition councillors may defend themselves against the majority in other situations involving proportionality, including the functioning of commissions and boards.

Thus, the Constitutional Court's judgment marked an important turning point in the Latvian legal system by enabling municipal councillors to obtain effective protection of their competence. The Court's findings effectively "closed" the legal vacuum that had previously existed regarding the resolution of disputes over councillors' competence. Although this matter is still not expressly regulated in statutory law, the Constitutional Court's conclusions, together with the case-law of the Supreme Court, have established a functioning and effective system of legal protection in this respect.

3. PROTECTING THE COMPETENCE OF MEMBERS OF PARLIAMENT

3.1. The competence of the Constitutional Court and the principle of application

In democratic states, it is characteristic of constitutional courts not only to review the conformity of legal norms with the constitution, but also to adjudicate disputes over competences among constitutional state organs (Neimanis 2019, 12). In this way, the supremacy of the constitution – its highest legal force – is comprehensively ensured in all legal relations, including the mutual interaction of constitutional state organs. Such cases fall, in classical terms, within the jurisdiction of a constitutional court.

The Constitutional Court cannot initiate proceedings on its own motions; rather, its activity is based on the principle of application. The Court may commence and adjudicate a case only on the basis of an application submitted by entitled participants. The circle of such applicants is defined by the law governing the Court's operation (Neimanis 2019, 57).

In Latvia, the Constitutional Court has jurisdiction to review disputes concerning the conformity with law of acts adopted by the Saeima, the Cabinet of Ministers, the President, the Speaker of the Saeima, and the Prime Minister, except for administrative acts. These are understood as disputes among constitutional state organs or their constituent parts – disputes over the exercise of competences, i.e. the rights and duties assigned in public law. According to the law, the right to submit an application in such cases belongs to a rather narrow group: the President, the Saeima, the Cabinet of Ministers, and not fewer than twenty members of the Saeima (Law on the Constitutional Court).

Thus, where a dispute arises between an individual member of the Saeima concerning the exercise of rights deriving from his or her mandate and another constitutional organ or its part, the individual member does not have access to the Constitutional Court. Since no other court has competence to resolve such disputes either, the result would be that the deputy is left without judicial protection.

3.2. Conflict between a member of the Saeima and the Saeima: The Constitutional Court's response

In 2019, at the request of the Prosecutor's Office, the Saeima adopted a decision authorising the prosecution of one of its members. According to the Rules of Procedure of the Saeima, a deputy against whom criminal proceedings have been initiated loses the right to participate in the sittings of the Saeima, its committees, and other institutions in which the Saeima has elected or appointed him or her, until the termination of criminal proceedings or the entry into force of a conviction. The deputy also loses the right to receive full remuneration and allowances. The member of the Saeima submitted a constitutional complaint, arguing that this

provision of the Rules of Procedure was contrary to the right to hold public office and to the presumption of innocence.

In examining the application, the Constitutional Court was first confronted with the question whether the restrictions imposed by the Saeima itself on the performance of a deputy's mandate constituted limitations on the deputy's fundamental rights. The Court concluded that the rights attached to the parliamentary mandate include participation in the work of the Saeima – taking part in sittings of the Saeima and its committees, and speaking and voting therein – as well as participation in institutions to which the Saeima has elected or appointed the deputy, and the right to remuneration for the performance of these duties. Every deputy is part of the Saeima, a constitutional organ of state power. The office of deputy is a public-law office; the specific rights and powers attached to it are elements of public-law competence. In exercising the rights and powers belonging to the mandate, a deputy performs public-law functions and does not act as a private person. At the same time, these public competences may overlap with fundamental rights, such as the right to participate in parliamentary elections and to be elected, as well as freedom of expression and other liberties.

The Court noted that, in cases of infringements of individual fundamental rights, the Law on the Constitutional Court provides for a constitutional complaint as a remedy. However, the contested norms also affected the rights and powers belonging to the parliamentary office, deriving from Article 5 of the Constitution. In cases of such infringements, the legislator had not provided the possibility for an individual deputy to submit an application in a dispute between constitutional organs. Since the principle of a state governed by the rule of law requires effective mechanisms for the protection of infringed rights, and since it is incompatible with this principle that protection should be denied merely because no procedural remedy has been provided, the Court concluded that shortcomings in the mechanisms for protecting the rights of a constitutional organ or its constituent parts may be remedied by a constitutional complaint, which by its nature and procedural preconditions is the closest available remedy. This was all the more justified since the legislature had already conferred competence on the Constitutional Court to adjudicate disputes among constitutional organs or their constituent parts, but had not provided a procedural instrument by which an individual member of the Saeima – himself or herself a constituent part of a constitutional organ – could protect the powers of office in case of infringement (Constitutional Court of the Republic of Latvia 2019).

In other words, in the absence of a secondary procedural rule ensuring full and effective access to the Constitutional Court, but in the presence of a primary rule conferring competence to protect such rights, the Court held that another legal instrument, namely the constitutional complaint, must be used to secure such protection in practice and effectively.

3.3. The impact of the Constitutional Court's judgment

The Constitutional Court again faced restrictions on the exercise of an individual deputy's mandate when it examined a complaint concerning the obligation imposed on all deputies during the COVID-19 pandemic to demonstrate solidarity with the wider society by undergoing compulsory vaccination. Non-compliance with this requirement resulted in a prohibition on exercising the rights of office. In this case too, the deputy challenged the restriction on his mandate rights. Since the Constitutional Court had already recognised that a member of the Saeima may protect restrictions on his or her competence by means of a constitutional complaint, the question of admissibility did not give rise to hesitation. The Court examined the merits and held that the restrictions imposed on the rights and powers of the parliamentary office were unjustified (Constitutional Court of the Republic of Latvia 2023).

4. LESSONS LEARNED AND IMPLICATIONS

Different procedural models may be used to safeguard mandate-related positions and competences of elected representatives. What matters most, however, is that a dispute-resolution and legal-protection mechanism is available at all, and that it is effective – providing timely and enforceable protection against unlawful restrictions and thereby preventing majority rule from turning into majority domination.

The Latvian experience in safeguarding the competences of municipal councillors and members of parliament highlights several important lessons for constitutional democracy.

First, the principle of effective legal protection is not confined to private individuals but extends equally to elected representatives. Both municipal and parliamentary deputies hold a public-law mandate, and the infringement of their competences constitutes not only an institutional irregularity but also an impairment of democratic representation.

Second, the jurisprudence of the Constitutional Court illustrates how constitutional justice can compensate for legislative omissions. For municipal councillors, the Court extended administrative judicial review to cover disputes concerning participatory rights, thereby closing a long-standing gap in the protection of local representatives. For members of the Saeima, it recognised that restrictions imposed by parliamentary rules may constitute violations of fundamental rights and competences, thereby allowing individual deputies to lodge constitutional complaints. In both instances, the Court ensured that no exercise of public authority remains beyond judicial scrutiny.

Third, these judgments underscore the centrality of minority protection in representative democracy. Effective legal remedies for councillors excluded from committees or for deputies suspended from parliamentary functions guarantee that majority rule does not degenerate into majority domination. Constitutional adjudication thereby acts as a safeguard of institutional balance and pluralism.

Taken together, these developments demonstrate that constitutional justice serves not only as a guardian of fundamental rights but also as a guarantor of the structural integrity of democratic governance. By recognising the enforceability of deputies' public competences and ensuring access to judicial remedies, the Latvian Constitutional Court has reinforced the rule of law and enhanced the legitimacy of both parliamentary and municipal institutions.

5. CONCLUSIONS

1. Effective protection applies to representatives as well as private persons

The rule of law requires that infringements of municipal and parliamentary deputies' competences be subject to judicial review, since these rights are integral to democratic representation.

2. Deputies' rights are public-law competences

Municipal councillors and members of parliament do not act as private individuals; they exercise a public mandate, and any restriction of their functions is an infringement of public authority.

3. Constitutional justice fills legislative gaps

In the absence of statutory remedies, the Constitutional Court extended administrative judicial review to councillors and admitted constitutional complaints from individual MPs, thereby ensuring effective legal protection.

4. Minority protection is essential for democracy

Judicial remedies enabling opposition councillors or deputies to contest majority decisions prevent majority rule from turning into domination, safeguarding pluralism.

5. The Constitutional Court guarantees institutional balance

By recognising deputies' competences as legally enforceable, the Court reinforced the rule of law and enhanced the legitimacy of both parliamentary and local representative institutions.

6. Effectiveness requires timeliness and enforceability

In competence disputes involving elected representatives, judicial protection must be capable of restoring the infringed competence within the term of office and must be supported by remedies that can be effectively implemented.

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