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LEGAL STANDARD FOR A NATIONWIDE ADMINISTRATIVE TERRITORIAL REFORM

Keywords: local municipalities, European Charter of Local Self-Government, administrative territorial reform

Summary

The article reviews the procedural and substantial standards developed by the Constitutional Court of the Republic of Latvia regarding the nationwide administrative territorial reform, which took place in 2019–2020. The article analyses the development of interpretation of Art. 5 of the European Charter of Local Self Government, as well as content and application of the principle of prohibition of arbitrariness in evaluating legality of a law, which outlines the administrative territorial division.

Introduction

Since regaining independence, the Republic of Latvia has performed two nationwide administrative territorial reforms, both aimed at creating larger and more efficient local municipalities. The first reform took place from 1998 to 2008, ending with adoption of the Law on Administrative Territories and Populated Areas[1] and eventually reducing the number of local municipalities from 522 to 119.[2] The second administrative territorial reform was commenced in 21 March 2019, when the Parliament adopted decision to "continue" the reform[3] and formally

[1] Law on Administrative Territories and Populated Areas. Adopted 18.12.2008. Available: https://likumi.lv/ta/en/en/id/185993-law-on-administrative-territories-and-populated-areas [viewed 30.10.2021.].

[2] See Vilka I. Administratīvi teritoriālais iedalījums un pašvaldības [Administrative territorial division and local municipalities]. In: Akadēmiskie raksti 4 sējumos "Latvieši un Latvija", III sējums "Atjaunotā Latvijas valsts". Rīga: Latvijas Zinātņu akadēmija, 2013, pp. 217–220.

[3] Par administratīvi teritoriālās reformas turpināšanu. Available: https://likumi.lv/ta/id/305738-par-administrativi-teritorialas-reformas-turpinasanu [viewed 30.01.2021.].

ended in 10 June 2020, when the Parliament adopted a new Law on Administrative Territories and Populated Areas, reducing the number of local municipalities from 119 to 42.[4] Both reforms were very different. If the procedure of the first reform was regulated by a particular law, initially stipulated a framework for free mergers and lasted for nearly 10 years,[5] then the second reform was implemented without adopting any special procedural regulations, did provide only centralized solutions and was completed in 15 months' time. Both laws, which prescribed the administrative territorial reform have been reviewed by the Constitutional Court in 2009 and 2021 respectively.

The aim of this article is to analyse the procedural and substantial standard set by the Constitutional Court of the Republic of Latvia, particularly regarding the interpretation and application of the Art. 5 of the European Charter of Local Self-Government (hereinafter – the Charter).[6] The article is intended as a tool for facilitating comparative analysis regarding administrative territorial reforms, since the approach taken by the Constitutional Court in interpreting the Art. 5 of the Charter is a novel approach and lessons drawn from the Latvian experience. Furthermore, an analysis of the constitutional case law might also be of interest to foreign legal scholars.

The research of the article is based mainly on judgments of the Constitutional Court of Latvia, outlining the ratio of the judgments and analysing its implications.

1. Procedural standards of administrative territorial reform

The legal requirements for procedure of administrative territorial reform can be prescribed both by international legal acts and national legislation. The most notable requirement of international law is prescribed in the Charter. Art. 4, para. 6 of the Charter prescribes that "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly." In addition, Art. 5 of the Charter stipulates that "changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute."

Both Articles of the Charter are ambiguous regarding the subject that has to be consulted with. Words "local communities concerned" can be interpreted either as local citizens or local authorities, i.e., official representatives of the local municipality. The Constitutional Court had to deal with this ambiguity in its

[4] Law on Administrative Territories and Populated Areas. Adopted 10.06.2021. Available: https://likumi.lv/ta/en/en/id/315654-law-on-administrative-territories-and-populated-areas [viewed 30.10.2021.].

[5] Law on Administrative Territorial Reform. Available: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Administrative-Territorial_Reform_Law.doc [viewed 30.10.2021.].

[6] European Charter of Local Self-Government. Available: https://rm.coe.int/168007a088 [viewed 30.10.2021.].

judgement of 2009, in which two local municipalities contested that during the administrative territorial reform of 2008 the government and the parliament had not complied with the Art. 5 of the Charter. It should be noted that additional ambiguity regarding the interpretation of the Article 5 of the Charter was added by the official translation of the Charter in Latvian, which regarding English phrase "local communities" uses term *vietējā vara* ("local power").[7] The Constitutional Court was aware of these various variants of interpretation and even had received an opinion from the Commission of Terminology of the Academy of Sciences, which stated that the words "local communities" used in the English version of the Charter should not be interpreted as "local power". Instead, these words should be interpreted in the meaning of "entirety of all citizens of the respective administrative territory". The Constitutional Court added, that, when "using grammatic interpretation, the Constitutional Court, if necessary, will take this opinion into account".[8]

However, the Constitutional Court did not follow this interpretation, and there were no further references to this opinion in the judgment. The Constitutional Court concluded that the rights to be consulted should be interpreted in conjunction with Article 3, para. 2 of the Charter, which states that the right of self-government "shall be exercised by councils or assemblies composed of members freely elected [...], and which may possess executive organs responsible to them." In addition, the Constitutional Court referred to Art. 101 of the Constitution, which, *inter alia*, states that "local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia". Thus, the Constitutional Court concluded that "consultations with the local communities in the meaning of the Article 5 of the Charter, first and foremost means consultations, where opinion of directly elected local council has been considered."[9] It was not contested that during the reform of 2008 consultations with local residents were not mandatory and had not been organized with regard to local municipalities, which submitted the petition to the Constitutional Court.

The same conclusion regarding the Art. 5 of the Charter reached the Supreme Court of Estonia in 2016, when evaluating the legality of the administrative territorial reform. The Supreme Court concluded: "The duty to establish the opinion of residents does not arise from § 158 of the Constitution. The Chamber is of the opinion that § 158 gives rise to a duty on the part of the executive to hear the opinion of a local authority body. The Chamber notes that the European Charter of Local Self-Government also does not require hearing the opinion of

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[7] Eiropas vietējo pašvaldību harta [European Charter of Local Self-Government]. Available: https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1173 [viewed 30.10.2021.].

[8] Judgment of the Constitutional Court of the Republic of Latvia of 30 October 2009 in Case No. 2009-04-06, para. 6. Available: https://likumi.lv/ta/id/200047-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-2pielikuma-novadi-un-to-teritoriala-iedalijuma-vienibas-103punkta-varduzerbenes-pagasts-un-kaives-pagasts-taurenes-pagasts-atbilstibu-1985gada-15oktobra-eiropas-vietejo-pasvaldibu-hartas-5pantam [viewed 30.10.2021.].

[9] Ibid., para.12.2.

local residents. Article 5 of the Charter stipulates: [...] Thus, the Charter leaves it to the State Party to decide whether to hold a referendum, which is binding under the Estonian legal order, or an opinion poll, which has no binding legal force in the Estonian legal order, or whether to give the competence of expressing the residents' opinion to a local authority body representing the community."[10]

In 2020, "A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government" was published by the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of the Council of Europe. The commentary reflected on different versions of the English and French text of the Article 5 of the Charter and gave a conclusion that "the term "local communities" should be interpreted in a way that also includes citizens and local civil society in general."[11]

However, the administrative territorial reform had already been decided upon in 2019 and the draft Law on Administrative territories and populated areas had already been submitted by the Cabinet of Ministers to the Parliament in 21 October 2019.[12] Although the ministry responsible for local municipalities organized various meetings with local councils and local residents, an assumption, based on the previous judgment of the Constitutional Court, was that although consultations with the local residents are desirable, they are not mandatory. In the cases decided by the Constitutional Court, it established that local municipalities have been consulted with in a following manner:

1) before or after the ministry had drafted the new territorial division, many municipal councils had decided to organize surveys of local residents, often asking an opinion, whether the local municipality should remain as a separate municipality. There were no uniform guidelines regarding such surveys (some were organized as a simple web survey in internet and some – even in a form similar to a referendum[13]);
2) the ministry responsible for local municipalities and drafting the new law had organized meetings with all municipal councils, which were affected by

[10] Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016 in Case No. 3-4-1-3-16, para. 136. Available: https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-3-16 [viewed 30.10.2021.].

[11] A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government. 2020, p. 24. Available: https://rm.coe.int/a-contemporary-commentary-by-the-congress-on-the-explanatory-report-to/16809cbf8c [viewed 31.10.2021.].

[12] Register of the Laws of the 13th *Saeima*. Available: http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/webSasaiste?OpenView&restricttocategory=462/Lp13 [viewed 31.10.2021.].

[13] The legality of such a survey was contested by the minister supervising local municipalities, and he suspended the legal act adopted by the municipal council to organize such a survey. Although the Latvian law did not provide a legal regulation for local referendums, the Constitutional Court decided that the local municipality was entitled to organize surveys in a manner similar to referendum. See judgment of the Constitutional Court of the Republic of Latvia of 15 May 2020 in Case No. 2019-17-05. Available: https://likumi.lv/ta/id/314770-par-vides-aizsardzibas-un-regionalas-attistibas-ministra-2019-gada-25-aprila-rikojuma-nr-1-259-par-ikskiles-novada [viewed 31.10.2021.].

the reform. However, often no minutes had been taken and therefore neither content, nor participants of these meetings had been identified;

3) in some instances, the ministry or the local municipality had organized special meetings with local residents;
4) during the legislative process in the Parliament, all municipal councils were invited to the sittings of the committee responsible for the draft law and representatives of municipal councils, as well as residents of municipalities had an opportunity to present their arguments.

Before the proceedings in the Constitutional Court, there were no doubts that the standard of consultations outlined in the judgment of the Constitutional Court of 2009 was met. However, if the Charter would have been interpreted in a way that obliged the State party to consult with local citizens, then it was doubtful that any proof on meaningful consultations (for instance, minutes including opinions and proposals of the citizens) could be presented before the Constitutional Court.

In the judgment, the Constitutional Court somehow tried to align its previous conclusions with regard to Art. 5 of Charter with the Commentary of the Charter of 2020. The Constitutional Court gave its merits regarding compliance of the procedure with Art. 5 of the Charter with a simple reference to its judgment made in 2020 regarding the legality of survey conducted by Ikšķile municipality.[14] In that judgment, in turn, the Constitutional Court, with a reference to point 6 of the judgment of 2009, where the opinion of the Terminology Council of the Academy of Sciences was outlined (see above), simply stated as a fact that the wording in Art. 5 of the Charter "local communities" means "local residents", without giving any further explanations.[15] However, after this conclusion, the Constitutional Court made a reference to its judgment of 2009, where it gave the interpretation that the consultations with local communities "first and foremost means consultations, where opinion of directly elected local council has been considered".[16] Having emphasized the importance of opinions of local residents, the Constitutional Court elaborated a test in order to evaluate the compliance of the consultation proceedings with Art. 5 of the Charter. The Constitutional Court stated that the purpose of consultations within the reform was to find out opinion of local residents and the local councils on various solutions of the administrative

[14] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 21.2. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[15] Judgment of the Constitutional Court of the Republic of Latvia of 15 May 2020 in Case No. 2019-17-05, para. 16.3. Available: https://likumi.lv/ta/id/314770-par-vides-aizsardzibas-un-regionalas-attistibas-ministra-2019-gada-25-aprila-rikojuma-nr-1-259-par-ikskiles-novada [viewed 31.10.2021.].

[16] Judgment of the Constitutional Court of the Republic of Latvia of 30 October 2009 in Case No. 2009-04-06, para. 6. Available: https://likumi.lv/ta/id/200047-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-2pielikuma-novadi-un-to-teritoriala-iedalijuma-vienibas-103punkta-varduzerbenes-pagasts-un-kaives-pagasts-taurenes-pagasts-atbilstibu-1985gada-15oktobra-eiropas-vietejo-pasvaldibu-hartas-5pantam [viewed 31.10.2021.].

territorial division, and to ensure that the state institutions managing the reform were informed about these opinions and evaluated them. Therefore, in order to evaluate, whether the consultations with the respective local municipalities during the process of drafting and reviewing the contested legal provisions, it shall be determined: 1) whether the municipal council had an opportunity, also by determining opinions of residents of the administrative territory, to prepare its own opinion regarding the planned reform and to submit proposals and objections to the relevant state institutions; 2) whether the time frame for these actions were reasonable; 3) whether the proposals and objections of local municipalities had been considered.[17] The Constitutional Court in three cases examined petitions from 19 local municipalities and did not find any breaches of this standard.

The first criterion is the most important novelty of the interpretation of Art. 5 of the Charter. On one hand, the Constitutional Court interpreted Art. 5 of the Charter as requiring consultations with local residents. On the other hand, it decided that the task of consulting with local residents lies within the competence of the municipal council. The Constitutional Court directly expressed a view that "it is the municipal council, who has the competence of finding out opinions of local residents within the preparation of the reform in order to present them to the state institutions."[18] Although some municipal councils had organized surveys of local residents, there were instances, when the municipal council had not organized consultations with local residents. For example, the Constitutional Court determined that the municipality of Garkalne had not organized consultations with the local residents. However, the local residents had had the opportunity to express their views in the gathering organized with members of municipal councillors by the ministry. Both councillors and local residents had the opportunity to express their opinions in the sitting of the committee of the Parliament, as well. Therefore, local residents and the municipal council had the opportunity to present their views.[19] Similar situation was with municipality of Sala, which had not organized any surveys. However, the Constitutional Court determined that a petition to the ministry have been signed and submitted by 585 residents. The Constitutional Court again concluded that local residents have had an opportunity to express their proposals and objections.[20]

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[17] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 23.2. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[18] Ibid., para. 23.3.

[19] Judgment of the Constitutional Court of the Republic of Latvia of 28 May 2021 in Case No. 2020-43-0106, para. 10.1. Available: https://likumi.lv/ta/id/323518-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[20] Judgment of the Constitutional Court of the Republic of Latvia of 21 June 2021 in Case No. 2020-41-0106, para. 17.1. Available: https://likumi.lv/ta/id/324203-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

This emphasis on opportunities to express proposals and objections is a very reasonable approach. The Constitutional Court acknowledged the importance of opinions of local residents and the manifestation of democracy in such consultations by referring to several documents of the Council of Europe, namely, the Recommendation Rec(2004)12 of the Committee of Ministers to Member States on the processes of reform of boundaries and/or structure of local and regional authorities[21] and the Resolution No. 437 (2018) of the Congress of Local and Regional Authorities on the consultation of local authorities by higher levels of government.[22] Opinions of citizens are welcomed in any policy decision making process, and they are of particular importance, when local matters are to be affected. However, there is a great difference in terms of purposefulness when the changes of local boundaries are made in a particular instance, affecting only several municipalities, and when they are made within a national administrative territorial reform. If the changes of borders have only local implications, then opinions of the residents are usually more direct and exact. However, within a nationwide territorial reform the consultations with local residents usually result in only general statements in opinion polls or a vast collection of very different arguments, starting with general objections against the purposes and necessity of reforms and ending with various comments on existing local problems and often contradicting proposals to their solutions. Although such a vast factual material might be useful in order to evaluate general attitude of the population, taking into account all such opinions, often based on a mixture of rational and emotional arguments, would often contradict to broader national interests, as well as uniform and rational approach towards policy decisions.

Another aspect, which somewhat diminishes the importance of consultations with local residents when introducing a national administrative territorial reform, is the fact that such consultations usually are organized only once and reflect opinions toward a project that can later be altered. When the draft project submitted for consultations is subsequently altered, then a new round of consultations is not mandatory. The Constitutional Court rightly argued that it was both acceptable and reasonable that the ministry, when consulting with the municipality, justified the purpose of reform, explain the criteria behind the administrative territorial division and submitted an already drafted proposal. Thus, a constructive process of the consultations and a purposeful hearing of opinions of local residents and the council are facilitated.[23] If changes to the borders of municipalities are made

[21] Recommendation Rec(2004)12 of the Committee of Ministers to member states on the processes of reform of boundaries and/or structure of local and regional authorities. Available: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dbeda [viewed 30.10.2021.].

[22] Resolution No. 437 (2018) of the Congress of Local and Regional Authorities on the consultation of local authorities by higher levels of government. Available: https://rm.coe.int/the-consultation-of-local-authorities-by-higher-levels-of-government-g/16808ecb38 [viewed 30.10.2021.].

[23] Judgment of the Constitutional Court of the Republic of Latvia of 28 May 2021 in Case No. 2020-43-0106, para. 9.1. Available: https://likumi.lv/ta/id/323518-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

within a nationwide administrative territorial reform, then the interests of local municipalities to be heard again and again on new solutions must be adjusted with interests of the state and other municipalities to conclude the reform in a reasonable time frame.[24]

Therefore, the ratio of the judgments of the Constitutional Court regarding interpretation of Art. 5 of the Charter is, as follows: when altering the boundaries of the local municipality, "local community", i.e., local residents must be given an opportunity to express their proposals and objects to the draft of the reform. The competence to organize such consultations with the local residents lies with the municipal council. This does not preclude that state institutions, which are responsible for the reform, may provide for a more elaborate procedures of consultations or to organize such consultations on their own initiative. Failure of the local municipality to organize such consultations does not mean that Art. 5 of the Charter has been breached, insofar as the local residents have had the opportunity to express their views to institutions responsible for the reform.

Regarding the second criterion – the reasonability of the time frame from consultations – the Constitutional Court did not provide any stringent guidelines, but concluded that the timeframe had been reasonable. The opportunities to express opinions both for local residents and municipal council were available at least from 14 of May, when the Cabinet of Ministers approved the draft proposal of the administrative territorial division, up to the beginning of 2020 when the parliamentary committee started to review proposals for the second reading of the draft law.

The third criterion – consideration of the proposals and objections – was evaluated by the Constitutional Court mainly with references to the fact that the opinions and proposals had been submitted to the parliamentary committee and that they have been debated in the sitting of the committee. Nearly all surveys conducted by the municipalities showed that more than 85% of all residents expressed objections against mergers of their municipalities with other municipalities. The Constitutional Court already in 2009 stated that the Charter does not grant rights of veto and that a positive decision of the municipality is not a precondition of legality of a reform.[25] In the judgment of 2021 the Constitutional Court emphasized – the mere fact that opinion of the local community has not

[24] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 23.4.1. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[25] Judgment of the Constitutional Court of the Republic of Latvia of 30 October 2009 in Case No. 2009-04-06, para. 8. Available: https://likumi.lv/ta/id/200047-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-2pielikuma-novadi-un-to-teritoriala-iedalijuma-vienibas-103punkta-varduzerbenes-pagasts-un-kaives-pagasts-taurenes-pagasts-atbilstibu-1985gada-15oktobra-eiropas-vietejo-pasvaldibu-hartas-5pantam [viewed 31.10.2021.].

been supported in the parliament, does not mean that proposals and objections have not been considered.[26]

2. Substantial standard of the administrative territorial reform

In 2009, when the Constitutional Court evaluated the legality of the previous administrative territorial reform, the Constitutional Court did not set any substantial standards that would impede the powers of the legislator. On the contrary, the Constitutional Court stated that the Constitutional Court "decided the case on the basis of legal arguments, in order to evaluate, whether any illegal decisions manifesting significant legal breaches, have been committed. In turn, choices on political decisions are within the competence of democratically elected legislator. [...] In this case as well the Constitutional Court abstains in evaluating arguments put forward by the municipal councils and which are targeted on political and economic utility [...] The task of the Constitutional Court in this case is only to evaluate, if, by adopting the contested provisions, due procedure has been observed."[27] The only substantial argument regarding the reform was a conclusion of the Constitutional Court that municipal councils and their territorial scope in broad terms should be decided solely by the legislator and not delegated to the Cabinet of Ministers. This conclusion was made on the basis of the so-called theory of essentiality, i.e., that the most important issues in the state should be decided only by the legislator.[28]

However, while evaluating the reform of 2020, the Constitutional Court established a new standard regarding substantial constitutionality of the law on the administrative territorial division. Although the Constitutional Court acknowledged that the legislator had a broad discretion in deciding upon the administrative territorial division, it could not use this discretion contrary to the general principles of law, including the principle of prohibition of arbitrariness.[29] In order to evaluate whether the legislator has not acted arbitrarily,

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[26] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 23.7. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[27] Judgment of the Constitutional Court of the Republic of Latvia of 30 October 2009 in Case No. 2009-04-06, para. 7.2. Available: https://likumi.lv/ta/id/200047-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-2pielikuma-novadi-un-to-teritoriala-iedalijuma-vienibas-103punkta-vardu-dzerbenes-pagasts-un-kaives-pagasts-taurenes-pagasts-atbilstibu-1985gada-15oktobra-eiropas-vietejo-pasvaldibu-hartas-5pantam [viewed 31.10.2021.].

[28] Decision of the Constitutional Court of the Republic of Latvia of 20 January 2009 on termination of proceedings in Case No. 2008-08-0306, para. 16.3. Available: https://likumi.lv/ta/id/186836-par-tiesvedibas-izbeigsanu-lieta-nr-2008-08-0306 [viewed 31.10.2021.].

[29] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 19. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

the Constitutional Court should determine: 1) if the purpose of the reform has been established and it is directed toward the common good of society; 2) if the criteria used as a basis of the reform are directed towards reaching the purpose of the reform; 3) whether the legislator has followed the purpose of the reform and the criteria when adopting the regulation; 4) whether the legislator has weighed the interests of the local community, i.e., pros and cons of the particular solutions of the administrative territorial division, including the rights of democratic participation of the local community.[30] Additionally, the Constitutional Court emphasized that taking into account the doctrine of essentiality and the principles of parliamentary democracy, as well as the margin of appreciation of legislator to decide on the administrative territorial reform, the parliament in exceptional cases can alter the proposed draft of the Cabinet of Ministers. Therefore, the Parliament in exceptional cases can step back from the criteria of the reform, if such exception is based on rational considerations and conforms with the purpose of the reform.[31]

There are no doubts that the prohibition of arbitrariness as a general principle of law binds the legislator, including, when deciding upon administrative territorial division. However, this is the first case in the Constitutional Court, where this principle has been applied towards a law. In general, the formulations of the test seem to be reasonable, with the exception of the fourth criteria (the rights of democratic participation). The Constitutional Court used these criteria to underline that by creating larger municipalities, possibilities for democratic participation in local matters may be diminished if no supplementary mechanisms to enhance democratic participation are added. However, this aspect may be relevant in the context of the principle of democracy, and not as a special criterion within the principle of prohibition of arbitrariness.

The most controversial issue, however, is not the test of prohibition of arbitrariness, but its application in the cases before the Constitutional Court. In general, the principle of prohibition of arbitrariness is breached, when no reasonable arguments have been put forward by the legislator, when adopting one decision or another. In most cases the Constitutional Court did not establish arbitrariness. However, the Constitutional Court declared that this principle had been breached, when the territory of a new municipality did not comply with one of the criteria of the reform – a national or regional centre of development is situated within the territory of a municipality. The Constitutional Court decided that this criterion was one of the most important criteria of the reform.[32] During the parliamentary

[30] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 25. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritorijuun-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-unteritoriala [viewed 31.10.2021.].

[31] Ibid., para. 28.

[32] Judgment of the Constitutional Court of the Republic of Latvia of 28 May 2021 in Case No. 2020-43-0106, para. 14.1. Available: https://likumi.lv/ta/id/323518-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

procedures, the parliamentary committee supported a proposal to restore in the division the already existing Saulkrasti municipality, which is located in the seaside, has a port and significant turnaround of citizens during the summer season. However, this territory did not have a status of regional development centre. It should be noted that the concept of "regional development centre" is mentioned in the Latvian National Strategy 2030 adopted by the *Saeima* in 2010. In this document, the whole concept is outlined in one page and the regional centres are 21 regional cities and 9 cities of national importance – they are expressed in a rather primitive map.[33] The concept of the regional centres was used previously as a political tool to concentrate EU funds in the most promising municipalities, and the whole approach to the concept of such centres was a political one. The entire concept of such centres has not been included in any law.

The members of parliament presented various arguments to support the idea of several municipalities, which did not comply with the abovementioned criteria. In the case of Saulkrasti municipality, it was argued that the municipality was a perspective centre of development, taking into account socio-economic data, dynamics of the number of residents, the strategic importance of the Saulkrasti as a seaside resort, as well as the necessity to expand the Skulte Port, which is located in the already existing Saulkrasti municipality.[34] The Constitutional Court dismissed these arguments, because these arguments have been too vague and were not based on exact data and research. The Constitutional Court refused to evaluate "projections about development of particular administrative territory".[35]

The consequences of such an approach are harsh – it does seem that the Constitutional Court has rejected the reasons and arguments delivered by the members of parliament both in committee and plenary sittings solely because there are only "projections", and these reasons and arguments are not based in exact data and research. Such a stringent approach, though, has created tensions between the Constitutional Court and the Parliament, and even brought about a constitutional crisis, when the Parliament decided to contradict the judgment in one of the cases.[36] Even at the time of drafting this article, there is no clear political solution on how to react in cases when the Constitutional Court has declared some territories of the newly established municipalities unconstitutional. Although

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[33] Sustainable Development Strategy of Latvia until 2030, p. 62. Available: https://www.pkc.gov.lv/sites/default/files/inline-files/LIAS_2030_en_0.pdf [viewed 31.10.2021.].

[34] Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106, para. 28.1. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].

[35] Ibid.

[36] Saeima sliecas nepildīt ST spriedumu un vēlas Varakļānus atstāt Rēzeknes novadā [The *Saeima* leans towards incompliance with the judgment of the Constitutional Court and votes to leave Varaklani in the municipality of Rezekne]. Available: https://www.delfi.lv/news/national/politics/saeima-sliecas-nepildit-st-spriedumu-un-velas-varaklanus-atstat-rezeknes-novada-plkst-1945.d?id=53252431 [viewed 07.11.2021.].

the test of prohibition of arbitrariness developed by the Constitutional Court is notable, its application in practice does seem to limit discretionary powers of the parliament to such amount that seems unjustified and, at least in the case of Latvia, has even created a constitutional crisis.

Conclusion

1. The ratio of the judgments of the Constitutional Court regarding interpretation of Art. 5 of the Charter is, as follows: when altering the boundaries of the local municipality, "local community", i.e., local residents must be given an opportunity to express their proposals and objects to the draft of the reform. The competence to organize such consultations with the local residents lies with the municipal council. This does not preclude that state institutions, which are responsible for the reform, may provide for a more elaborate procedures of consultations or to organize such consultations on their own initiative. Failure of the local municipality to organize such consultations does not mean that Art. 5 of the Charter has been breached, insofar as the local residents have had the opportunity to express their views to institutions responsible for the reform. This is a novel interpretation of Art. 5 of the Charter and is noteworthy addition to the practice of interpretation of the Charter by constitutional courts.
2. Consultations during a nationwide administrative territorial reform are less productive and therefore less significant, than consultations which are carried out in particular instances of border changes outside a nationwide administrative territorial reform.
3. The Constitutional Court has elaborated a novel substantial standard regarding evaluations of principle of prohibition of arbitrariness. Although the test elaborated by the Constitutional Court is well reasoned and does require the legislator to provide reasoned arguments, when altering the administrative territorial division, the standard set by the Constitutional Court does seem to be too stringent, and in practice significantly eliminates the discretion of the Parliament.

BIBLIOGRAPHY

Literature

1. A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government. 2020. Available: https://rm.coe.int/a-contemporary-commentary-by-the-congress-on-the-explanatory-report-to/16809cbf8c [viewed 31.10.2021.].
2. Vilka I. Administratīvi teritoriālais iedalījums un pašvaldības [Administrative territorial division and local municipalities]. In: Akadēmiskie raksti 4 sējumos "Latvieši un Latvija", III sējums "Atjaunotā Latvijas valsts". Rīga: Latvijas Zinātņu akadēmija, 2013, pp. 214–242.

Legal acts

3. The Constitution of the Republic of Latvia. Available: https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia [viewed 30.10.2021.].
4. European Charter of Local Self-Government. Available: https://rm.coe.int/168007a088 [viewed 30.10.2021.].
5. Eiropas vietējo pašvaldību harta [European Charter of Local Self-Government]. Available: https://likumi.lv/ta/lv/starptautiskie-ligumi/id/1173 [viewed 30.10.2021.].
6. Law on Administrative Territories and Populated Areas. Adopted 10.06.2021. Available: https://likumi.lv/ta/en/en/id/315654-law-on-administrative-territories-and-populated-areas [viewed 30.10.2021.].
7. Law on Administrative Territories and Populated Areas. Adopted 18.12.2008. Available: https://likumi.lv/ta/en/en/id/185993-law-on-administrative-territories-and-populated-areas [viewed 30.11.2021.].
8. Law on Administrative Territorial Reform. Available: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Administrative-Territorial_Reform_Law.doc [viewed 30.10.2021.].

Court practice

9. Judgment of the Constitutional Court of the Republic of Latvia of 21 June 2021 in Case No. 2020-41-0106. Available: https://likumi.lv/ta/id/324203-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].
10. Judgment of the Constitutional Court of the Republic of Latvia of 28 May 2021 in Case No. 2020-43-0106. Available: https://likumi.lv/ta/id/323518-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 30.10.2021.].
11. Judgment of the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No. 2020-37-0106. Available: https://likumi.lv/ta/id/321703-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-pielikuma-administrativas-teritorijas-to-administrativie-centri-un-teritoriala [viewed 31.10.2021.].
12. Judgment of the Constitutional Court of the Republic of Latvia of 15 May 2020 in Case No. 2019-17-05. Available: https://likumi.lv/ta/id/314770-par-vides-aizsardzibas-un-regionalas-attistibas-ministra-2019-gada-25-aprila-rikojuma-nr-1-259-par-ikskiles-novada [viewed 31.10.2021.].
13. Judgment of the Constitutional Court of the Republic of Latvia of 30 October 2009 in Case No. 2009-04-06. Available: https://likumi.lv/ta/id/200047-par-administrativo-teritoriju-un-apdzivoto-vietu-likuma-2pielikuma-novadi-un-to-teritoriala-iedalijuma-vienibas-103punkta-vardu-dzerbenes-pagasts-un-kaives-pagasts-taurenes-pagasts-atbilstibu-1985gada-15oktobra-eiropas-vietejo-pasvaldibu-hartas-5pantam [viewed 30.10.2021.].
14. Decision of the Constitutional Court of the Republic of Latvia of 20 January 2009 on termination of proceedings in Case No. 2008-08-0306, para. 16.3. Available: https://likumi.lv/ta/id/186836-par-tiesvedibas-izbeigsanu-lieta-nr-2008-08-0306 [viewed 31.10.2021.].
15. Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016 in Case No. 3-4-1-3-16. Available: https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-3-16 [viewed 30.10.2021.].

Other materials

16. Recommendation Rec(2004)12 of the Committee of Ministers to member states on the processes of reform of boundaries and/or structure of local and regional authorities. Available: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dbeda [viewed 30.10.2021.].
17. Resolution No. 437 (2018) of the Congress of Local and Regional Authorities on the consultation of local authorities by higher levels of government. Available: https://rm.coe.int/the-consultation-of-local-authorities-by-higher-levels-of-government-g/16808ecb38 [viewed 30.10.2021.].
18. Par administratīvi teritoriālās reformas turpināšanu. Available: https://likumi.lv/ta/id/305738-par-administrativi-teritorialas-reformas-turpinasanu [viewed 30.01.2021.].
19. Sustainable Development Strategy of Latvia until 2030. Available: https://www.pkc.gov.lv/sites/default/files/inline-files/LIAS_2030_en_0.pdf [viewed 31.10.2021.].
20. Register of the Laws of the 13th *Saeima*. Available: http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/webSasaiste?OpenView&restricttocategory=462/Lp13 [viewed 31.10.2021.].
21. Saeima sliecas nepildīt ST spriedumu un vēlas Varakļānus atstāt Rēzeknes novadā [The *Saeima* leans towards incompliance with the judgment of the Constitutional Court and votes to leave Varaklani in the municipality of Rezekne]. Available: https://www.delfi.lv/news/national/politics/saeima-sliecas-nepildit-st-spriedumu-un-velas-varaklanus-atstat-rezeknes-novada-plkst-1945.d?id=53252431 [viewed 07.11.2021.].