Constitutional judgement 3-4-1-2-15

SUPREME COURT

EN BANC

JUDGMENT
in the name of the Republic of Estonia

Case number	3-4-1-2-15
Date	1 July 2015
Formation	Chairman: Priit Pikamäe; members: Jüri Ilvest, Peeter Jerofejev, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Saale Laos, Viive Ligi, Jaak Luik, Ivo Pilving, Jüri Põld, Malle Seppik and Tambet Tampuu
Case	Review of the constitutionality of subsection 3 of § 4 and subsection 3 of § 22 of the Riigikogu Election Act
Basis for proceedings	Judgment of the Tallinn Circuit Court of 25 February 2015 in administrative case no. 3-15-403 and judgment of the Tallinn Circuit Court of 27 February 2015 in administrative case no. 3-15-412
Hearing	Written procedure

OPERATIVE PART

To dismiss the requests contained in the judgment of the Tallinn Circuit Court of 25 February 2015 in administrative case no. 3-15-403 and judgment of the Tallinn Circuit Court of 27 February 2015 in administrative case no. 3-15-412.

FACTS AND COURSE OF PROCEDURE

1. On 2 February 2015, Andrus Erik (applicant 1) submitted to the Jõhvi Rural Municipality Administration a request that he be entered in the list of voters for the elections of the Riigikogu. On 11 February 2015, the Jõhvi Rural Municipality secretary dismissed the request of applicant 1 based on subsection 3 of § 4, subsection 3 of § 22 and clause 1 of subsection 1 of § 25 of the Riigikogu Election Act (REA). On 16 February 2015, applicant 1 filed with the Tallinn Administrative Court an application requesting that the Jõhvi Rural Municipality Administration be ordered to enter applicant 1 in the list of voters for the elections of the Riigikogu.

2. By judgment no. 3-15-403 of 19 February 2015, the Tallinn Administrative Court dismissed the application of applicant 1. The step taken by the rural municipality secretary was in accordance with the law in force. Section 58 of the Constitution allows for statutory circumscription of participation in voting in the case of citizens of Estonia who have been convicted by a court and are serving a sentence in a penal institution and the REA provides for such a restriction. The administrative court assessed the proportionality of the restriction based on how the applicant was. Applicant 1 has been repeatedly convicted of criminal offences, he has committed a new crime during the probation period and during imprisonment four unexpired disciplinary penalties have been imposed on him. Applicant 1 will be discharged from prison on 31 March 2016 and, thus, the restriction towards him is temporary. The provisions of the REA regarding applicant 1 are also not in conflict with Article 3 of Protocol no. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) or the case law of the European Court of Human Rights (ECtHR) clarifying it. States have broad discretion upon securing the election right of prisoners who are serving an imprisonment sentence, taking into account the duration of the imprisonment as well as the nature and severity of the offence. Applicant 1 filed an appeal against the judgment of the administrative court, asking that the judgment of the administrative court be quashed and a new judgment granting the appeal be made.

3. By the judgment of 25 February 2015 in administrative case no. 3-15-403, the Tallinn Circuit Court did not apply subsection 3 of § 4 and subsection 3 of § 22 of the REA and declared the provisions unconstitutional and the judgment immediately enforceable so that applicant 1 was able to vote in the elections of the Riigikogu. On 25 February 2015 the Tallinn Circuit Court forwarded the judgment to the Supreme Court for commencement of judicial constitutional review proceedings. The number of this constitutional review case is 3-4-1-2-15.

4. On 9 February 2015, Romeo Kalda (applicant 2) submitted to the Märjamaa Rural Municipality Administration a request where he requested that he be entered in the list of voters for the elections of the Riigikogu. On 11 February 2015, the Märjamaa Rural Municipality secretary dismissed the request based on subsection 3 of § 4 and subsection 3 of § 22 of the REA. On 17 February 2015, R. Kalda submitted to the Tallinn Administrative Court an application for quashing the decision of the secretary of the Märjamaa Rural Municipality of 11 February 2015 and ordering the secretary to enter applicant 2 in the list of voters for the elections of the Riigikogu.

5. By judgment no. 3-15-412 of 20 February 2015, the Tallinn Administrative Court dismissed the application of applicant 2. In the decision, the administrative court also referred to the possibility provided for in § 58 of the PC to circumscribe prisoners' right to vote and to the respective circumscription arising from the REA. Applicant 2 is serving a life sentence for various crimes, incl. for repeat murder and for torturing a co-prisoner during the imprisonment, which refer to utmost disrespect for the Estonian legal order and social values. Applicant 2 is not in prison for the first time and he has personally, by his own actions, brought about the restrictions arising from the imprisonment. One of the purposes of restricting the right to vote is to penalise the criminal by reducing the ability to influence social life. Given the purpose of the restriction, the duration of the imprisonment as well as the nature and severity of the committed offences, the prohibition to vote is proportionate towards applicant 2. A person serving a life sentence can be released before the prescribed time; thus, the restriction is not for life. R. Kalda filed an appeal against the judgment of the administrative court, asking that the judgment of the administrative court be quashed and a new judgment granting the appeal be made.

6. By the judgment of 27 February 2015 in administrative case no. 3-15-412, the Tallinn Circuit Court did not apply subsection 3 of § 4 and subsection 3 of § 22 of the REA and declared the provisions unconstitutional and the judgment immediately enforceable so that applicant 2 was able to vote in the elections of the Riigikogu. On 27 February 2015 the Tallinn Circuit Court forwarded the judgment to the Supreme Court for commencement of judicial constitutional review proceedings. The number of this constitutional review case is 3-4-1-3-15.

7. The Constitutional Review Chamber of the Supreme Court joined the court cases specified in sections 3 and 6 above on 4 March 2015 and set the number of the case to 3-4-1-2-15.

8. By an order of 12 May 2015, the Constitutional Review Chamber of the Supreme Court referred the case for adjudication to the Supreme Court *en banc*.

JUDGMENTS OF THE TALLINN CIRCUIT COURT

9. The reasons given in the 25 February 2015 judgment of the Tallinn Circuit Court in administrative case no. 3-15-403 and in the 27 February 2015 judgment in case no. 3-15-412 largely overlap; the latter judgment merely covers the views of the ECtHR in greater detail. Therefore, a joint summary of the reasons of both decisions will be given next.

10. The dispute concerns the issue of whether subsection 3 of § 4 and subsection 3 of § 22 of the REA are in accordance with §§ 11, 57 and 58 of the Constitution as well as with Article 3 of Protocol no. 1 to the ECHR. Section 58 of the Constitution gives the legislature the chance to restrict the right to vote of persons who have been convicted by a court of a criminal offence and serve a sentence in a custodial institution. It is the discretion of the legislature which calls for the establishment of the relevant restriction by law.

11. Article 3 of Protocol no. 1 of the ECHR obligates the contracting parties to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature. Under § 59 of the Constitution, legislative authority in Estonia is vested in the Riigikogu. The decisions of the Riigikogu affect the rights, human dignity and wellbeing of a convict and prisoner to a considerable extent, as a result of which the absence of the right to vote intensively infringes the fundamental rights of a person. According to the case law of the ECtHR and legal writings, the statutory full restriction of all sentenced prisoners' right to vote is disproportionate. The restrictions must not distort the evolution of the free will of people with the right to vote or preclude the identification of the actual will of the people in general elections via leaving one group of persons out (the 6 October 2005 judgment of the ECtHR in Hirst vs. United Kingdom (no. 2), p. 62).

12. In order to assess the proportionality of the restriction of the right to vote based on the person, the law should set out the criteria for discretion. Such an approach also arises from section I.1.1.d.v of the Code of Good Practice in Electoral Matters adopted by the Council of Europe Venice Commission. The ECtHR has also considered it possible that restrictions of the right to vote are established by act-level criteria as to which prisoners have the right to vote and which do not (the 22 May 2012 judgment of the ECtHR in Scoppola vs. Italy 126/05). In Estonia, the legislature has not established any criteria. Even after the Scoppola vs. Italy decision, the ECtHR has found that the absolute restriction of the right to vote in the United Kingdom, which does not depend on the length of the prisoner's sentence or the severity of the crime, thus being similar to that of Estonia, violates the requirements of Article 3 of Protocol no. 1. In Hirst vs. United Kingdom (no. 2), the appellant was a person sentenced for life for a murder committed in 1980 and the ECtHR held that it cannot be presumed that even if the legislature had properly exercised its discretion, the appellant would have been subject to the prohibition to vote. Due to a conflict with Article 3 of Protocol no. 1 of the ECHR and subject to the combined effect of §§ 57 and 58 and subsection 2 of § 123 of the Constitution, the circuit court declared subsection 3 of § 4 and subsection 3 of § 22 of the REA unconstitutional and did not apply them.

13. Based on the judgments of the circuit court, both applicants were able to vote in the elections of the Riigikogu.

OPINIONS OF PARTIES

The Riigikogu
14.-17. [Omitted.]

A. Erik
18. [Omitted.]

R. Kalda
19. [Omitted.]

Jõhvi Rural Municipality Administration
20. [Omitted.]

Märjamaa Rural Municipality Administration
21. [Omitted.]

Chancellor of Justice
22.-25. [Omitted.]

Minister of Justice
26.-30. [Omitted.]

Minister of Foreign Affairs
31.-33. [Omitted.]

PROVISIONS DECLARED UNCONSTITUTIONAL

34. Subsection 3 of § 4 "Right to vote and stand as a candidate" of the Riigikogu Election Act:
"A person who has been convicted of a criminal offence by a court and is imprisoned is not allowed to participate in voting."

35. Subsection 3 of § 22 “List of voters” of the Riigikogu Election Act:
“A person is not entered in the list of voters if he or she has been convicted of a criminal offence by a court pursuant to information kept in the criminal records database and if, as of the thirtieth day before election day, he or she is serving a prison sentence until the election day.”

OPINION OF COURT *EN BANC*

36. First, the Court *en banc* will examine the relevance of the provisions of law (I) and thereafter will identify the infringed fundamental right and assess the constitutionality of its infringement (II). Finally, the Court *en banc* will give additional explanations (III).

I

37. First, the Court *en banc* will examine whether the provisions not applied by the circuit court are relevant to this case.

38. Subsection 3 of § 4 of the REA imposes the prohibition to vote on a person who has been convicted of a criminal offence by a court and is serving a prison sentence. Subsection 3 of § 22 of the REA provides for the refusal to enter a person in the list of voters if he or she has been convicted of a criminal offence by a court pursuant to information kept in the criminal records database and if, as of the thirtieth day before election day, he or she is serving a prison sentence until the election day.

39. By a judgment dated 16 December 1996 the Ida-Viru County Court found applicant 1 guilty under clause 7 of § 101 of the Criminal Code (CC) (murder in an exceptionally torturous and cruel manner), clauses 1-3 of subsection 2 of § 139 of the CC (secret theft committed by a group of persons for at least a second time and by way of removing an obstacle or lock) and subsection 1 of § 195 of the CC (hooliganism), and sentenced him to prison for a total of 15 years.

40. The Kohtla-Järve City Court also convicted applicant 1 by a judgment of 20 December 1996 based on clauses 1 and 2 of subsection 2 of § 197 of the CC (theft of a motor vehicle if committed at least for a second time and by a group of persons) and sentenced him to prison for one year and six months. On 11 February 2008, applicant 1 was released from prison before the prescribed time on probation until 30 December 2010.

41. Applicant 1 was detained again on 12 November 2009 as a suspect and arrested on 13 November 2009. By a judgment of 10 November 2010, the Pärnu County Court found applicant 1 guilty under clauses 1, 2 and 3 of subsection 2 of § 209 of the Penal Code (PC) (fraud committed by a person who has been penalised for a similar criminal offence before and by an official and to a large degree) and sentenced him to prison, taking into account the non-served portion of the previous penalty, for a total of six years, four months and 19 days.

42. By a judgment of 7 June 1996, the Harju County Court found applicant 2 guilty under clause 1 of subsection 3 of § 139 (secret theft to a large degree), clause 2 of subsection 2 of § 2071 (theft or robbery of a firearm, ammunition or explosives if committed by a group of persons), subsection 3 of § 101 (murder on aggravating circumstances if committed for the purpose of hiding a criminal offence), clauses 1, 2, 3 and 4 of subsection 2 of § 141 (robbery if committed by a group of persons and using a weapon or another object used as a weapon by a person who has been convicted of a similar criminal offence before, and if related to the removal of an obstacle or lock preventing access to the location of the property), subsection 2 of § 185 (theft of a document proving a person's identity and citizenship or of another official personal document as well as using the official personal document of another person) and subsection 1 of § 176 (escape of the person in custody) of the CC and sentenced him to prison for 12 years. By a judgment of 18 October 1996 the Tallinn Circuit Court quashed the conviction under subsection 3 of § 101 of the CCP and convicted applicant 2 under § 100 (murder) and set his ultimate sentence to 11 years of imprisonment.

43. By a judgment of 2 January 1997, the Tallinn City Court also convicted appellant 2 under subsection 1 of § 176 of the CC (escape from custody), subsections 1 and 2 of § 207 (illegal making, acquisition, possession, use, transportation, sale or forwarding of a firearm or ammunition as well as illegal carrying or delivery of ammunition and illegal carrying or delivery of a firearm), clauses 1, 2 and 3 of subsection 2 of § 139 (secret theft committed by a group of persons for at least a second time and by way of removing an obstacle or lock preventing access to the location of property), clauses 1, 3, 4, 5 and 8 of § 101 and subsection 2 of § 15 (attempt of murder if committed for the purposes of personal gain, hiding another criminal offence or committing another criminal offence more easily in connection with the victim's performance of a service or public duty, with regard to two or more persons and by a person who has committed a murder before), clauses 1, 3, 4, 5 and 8 of § 101 of the CC (see above; more specifically, the murder of the police officer who tried to apprehend him) and sentenced him to execution by a firing squad. By its judgment of 1 April 1997, Tallinn Circuit Court partially quashed the 2 January 1997 judgment of Tallinn City Court: he was acquitted and clear of charges under clauses 1, 3, 4, 5 and 8 of § 101 and subsection 2 of § 15, under clauses 1 and 3 of § 101 of the CC and regarding the sentence and the adding-up of the sentences imposed under clauses 4 and 8 of § 101 of the CC. Ultimately, a life sentence for all of the criminal offences was imposed.

44. Again, the Tallinn City Court convicted applicant 2 by a judgment of 30 December 1997 under clauses 1, 2, 3, 4 and 41 of subsection 2 of § 141 of the CC (robbery if committed by a group of persons, by a person who has committed a similar criminal offence before, if committed with a weapon or another object used as a weapon, if it was related to the removal of an obstacle or lock preventing access to the location of property and if it involved hiding one's face with a cover or a mask or in another manner that prevented the identification of the person), clause 1 of subsection 3

of § 139 (secret theft to a large degree), subsection 2 of 185 (theft of a document proving a person's identity and citizenship or of another official personal document as well as using the official personal document of another person), subsection 1 of § 207 (illegal making, acquisition, possession, use, transportation, sale or forwarding of a firearm or ammunition as well as illegal carrying or delivery of ammunition) and subsection 3 of § 2071 (public theft or robbery of a firearm, ammunition or explosives) of the CC. The life sentence imposed by the 1 April 1997 judgment of the Tallinn Circuit Court was deemed as the final penalty. By its judgment of 23 April 1998, the Tallinn Circuit Court partially quashed the judgment of the Tallinn City Court of 30 December 1997 and applicant 2 was acquitted under clause 41 of subsection 2 of § 141 of the CC.

45. The Tallinn City Court convicted applicant 2 again by a judgment of 29 November 2000 under clauses 2 and 3 of subsection 2 of § 139 of the CC (secret theft if committed by a group of persons and involving the removal of an obstacle or lock preventing access to the location of property). The final sentence imposed by the Tallinn City Court was the life sentence imposed by the 30 December 1997 judgment.

46. Thereafter, the Harju County Court also convicted applicant 2 by a judgment of 24 May 2010 under clauses 1 and 4 of § 114 of the PC and subsection 2 of § 22 of the PC (instigation to murder committed in a torturous manner and at least for a second time) and under § 122 of the PC (torture). A life sentence was imposed on applicant 2 as a combined penalty.

47. Thus, both applicants are persons who have been repeatedly convicted of criminal offences by the court and who were serving a prison sentence up to the election day as of the thirtieth day preceding the Riigikogu elections day in 2015. The Jõhvi Rural Municipality secretary refused to enter applicant 1 and the Märjamaa Rural Municipality secretary refused to enter applicant 2 in the list of voters of the elections of the Riigikogu in 2015 because subsection 3 of § 4 and subsection 3 of § 22 of the REA precluded the entry of the applicants in the list of voters. Thus, these provisions are relevant.

II

48. Subsection 1 of § 57 of the Constitution stipulates that any citizen of Estonia who has attained eighteen years of age is eligible to vote. Since the relevant provisions preclude the applicants' right to vote in the elections of the Riigikogu, it constitutes an infringement of the applicants' right to vote established in § 57 of the Constitution.

49. Section 58 of the Constitution allows for circumscribing participation in elections in the case of citizens of Estonia who have been convicted by a court and are serving a sentence in a penal institution. It is a simple statutory reservation, which means that the right to vote of persons serving

a prison sentence may be restricted if the restriction of the right to vote is contained in law, the purpose of the restriction is not unconstitutional and the restriction is proportionate to the purpose sought.

50. The restriction of the right to vote of persons serving a prison sentence was also contained in Estonia's pre-war constitutions. Subsection 2 of § 28 of the 1920 constitution stipulated: "Some types of criminals are deprived of the right to vote based on the Riigikogu Election Act." Subsection 2 of § 37 of the constitution adopted in 1937 stipulated that some types of judicially penalised citizens may be deprived of the right to vote by law. Historically, the restriction of the right to vote of persons serving a sentence in a penal institution has been justified by technical difficulties in carrying out the voting act of prisoners. Given the modern capabilities, the mere technical difficulties cannot be deemed sufficient in justifying the restriction of the fundamental rights (cf. the 21 January 2004 judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-7-03, para. 39).

51. In the opinion of the Supreme Court *en banc*, the desire to temporarily remove persons who have seriously harmed the legal values that serve as the basis for communal life, including those that are considered worthy of protection under the Penal Code, from exercising public authority via the elections of the Riigikogu must be considered as the first reason for the restriction of the right to vote of persons convicted by a court and serving a prison sentence in a penal institution. Such removal serves, above all, the purpose of the legitimacy of the public authority, allowing only persons who have not called the aforementioned values into doubt by their acts to participate in the legitimisation of authority via elections. Also, such restriction protects the rights of the persons who have not expressed such disrespect towards the values serving as the basis for communal life by their acts and fosters the rule of law, which is also a legal value of a constitutional rank.

52. Thus, these purposes are legitimate for restricting the right to vote. This does not mean that the right to vote, which is of utmost importance in a democratic society, could be restricted lightly.

53. Making a decision as to which offences or assessments of offences suffice for restricting the right to vote is within the competence of, above all, the legislature. The present case arises from the constitutional review proceedings initiated by a court and, thus, the matter in hand involves specific constitutional review. Under subsection 1 of § 15 and subsection 2 of § 152 of the Constitution and subsection 2 of § 14 of the JCRPA, the Supreme Court declares a legislative instrument or provision relevant to the court case to be unconstitutional. The Supreme Court has noted in its case law that the purpose of specific constitutional review is to serve the interests of, above all, parties to the proceedings (see, for instance, the 28 May 2008 order of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-4-08, para. 15) and that, within specific constitutional review, the Chamber assesses the constitutionality of a provision based on the facts of the specific case (see, for instance, the 15 December 2009 judgment in case no. 3-4-1-25-09, para. 26). Thus, the present case involves specific constitutional review proceedings and in the course thereof the Court *en banc* can only assess whether in the case of either applicant the legislature has proportionately exercised its right contained in § 58 of the Constitution.

54. The Court *en banc* has no doubts about the appropriateness or necessity of the restriction for attainment of the aforementioned legitimate purposes. Next, the Court *en banc* will examine whether the restriction is proportional in the narrow sense for attainment of the purposes.

55. To decide whether a measure is proportional in the narrow sense, the scope and intensity of interference with a fundamental right must be weighed on the one hand and the importance of the purpose on the other (see, for instance, the 6 March 2002 judgment of the Constitutional Review Chamber of the Supreme Court in case no. 3-4-1-1-02, para. 15).

56. The right to vote in parliamentary elections ensures the functioning of the democratic organisation of the state. It is an important fundamental right, but the exclusion of certain persons or strictly limited small groups of persons from voting does not undermine the democratic formation of the will on the whole. In § 58 of the PC, the constitutional legislature has explicitly allowed for restricting the right to vote of persons serving a prison sentence.

57. In its case law, the European Court of Human Rights has held that an automatic voting ban on all persons who are serving a prison sentence is disproportionate (see, for instance, Hirst vs United Kingdom (no. 2), no. 74025/01, 6 October 2005, para. 82). The Court *en banc* finds that an absolute ban on the right to vote, which is imposed on a group of persons limited based on certain features and does not allow for any weighing of the ban, may render a disproportionate result. In the present case, this is so in the case of the given applicants, too. The Court *en banc* explains its opinion as follows.

58. Applicant 1 has been convicted of: a murder in an exceptionally torturous and cruel manner; secret theft, if committed by a group, for at least a second time and by removing an obstacle or lock; hooliganism; theft of a motor vehicle, if committed at least for a second time and by a group of persons; and of fraud, if committed by a person who has been convicted of a similar criminal offence before and by an official and to a large degree (for further information see paragraphs 39-41 above). Applicant 1 was released from prison in 2008 before serving the full sentence but committed a new crime during the probation period. He is currently serving a prison sentence of over six years for these criminal offences, taking into account the non-served portion of the previous sentence.

59. Thus, applicant 1 has been convicted of multiple especially severe criminal offences, including of a murder in an exceptionally torturous and cruel manner. Murder is one of the most serious types of criminal offences under the Penal Code. Applicant 1 committed a new crime after being released from prison on probation. Given the dangerousness of the criminal offences, a long-term prison sentence has been imposed on him. Given that the Constitution expressis verbis allows for restricting the right to vote of persons serving a prison sentence and the criminal offences

committed by applicant 1, notably murder under aggravating circumstances, as well as that the person continued committing criminal offences after partially serving the prison sentence and was released on probation before the prescribed time and the length of the sentence based on the severity of his crimes, the restriction of the right to vote of applicant 1 is, according to the Supreme Court *en banc*, proportionate.

60. Applicant 2 has been convicted of the following: a secret theft to a large degree; theft or robbery of a firearm, ammunition or explosives if committed by a group of persons; murder; twice of robbery, if committed by a group of persons and using a weapon or another object used as a weapon, by a person who has committed a similar criminal offence before, and if it was related to the removal of an obstacle or lock preventing access to the location of property; twice of theft of a document proving a person's identity and citizenship or of another official personal document; using the official personal document of another person; twice of escaping from custody; twice of illegal making, acquisition, possession, use, transportation, sale or forwarding of a firearm or ammunition as well as illegal carrying or delivery of ammunition; illegal carrying or delivery of a firearm; secret theft, if committed by a group, for at least a second time and by removing an obstacle or lock preventing access to the location of property; murder under aggravating circumstances if committed in connection with the victim's performance of a service or public duty (i.e. murder of the police officer who tried to apprehend him) and by a person who has committed a murder before; secret theft to a large degree; public theft or robbery of a firearm, ammunition or explosives; secret theft, if committed by a group of persons and involving the removal of an obstacle or lock preventing access to the location of property; instigation to murder committed in an exceptionally torturous and cruel manner and at least for a second time, and torture (for further information see paragraphs 42-46 above). In one court case, the court of the first instance sentenced applicant 2 to death by firing squad, but the circuit court transformed the sentence to life in prison.

61. Thus, applicant 2 has been convicted of many severe criminal offences committed at different times, incl. for two murders, on one occasion for killing a police officer who was performing his service duties, for an attempted murder and instigation to murder, and he has twice escaped from custody and also continued committing severe crimes in prison. Based on the dangerousness of these especially severe criminal offences, applicant 2 has been sentenced to life in prison, which, according to the sanction system of the Penal Code, is an exceptional and the severest type of penalty. Given that the Constitution expressis verbis allows for restricting the right to vote of persons serving a prison sentence and the criminal offences committed by applicant 2, above all, the killing of a police officer who was performing his service duties, the number of many serious criminal offences, the commitment of offences during imprisonment and the life sentence imposed on him based on the severity of the criminal offences, the restriction of the right to vote of applicant 2 is proportionate.

62. Based on the findings in paragraphs 59 and 61 and clause 1 of subsection 1 of § 15 of the JCRPA, the requests contained in the 25 February 2015 judgment in case no. 3-15-403 and in the 27 February 2015 judgment in case no. 3-15-412 of the Tallinn Circuit Court must be dismissed.

III

63. The Supreme Court *en banc* also notes that it interprets § 57 of the Constitution similarly to the interpretation of Article 3 of Protocol no. 1 of the ECHR by the European Court of Human Rights. The ECtHR has held that a general, an automatic and non-selective voting ban of prisoners in parliamentary elections is against the Convention (Hirst vs United Kingdom (no. 2), no 74025/01, 6 October 2005, para. 82). In Frodl vs. Austria, the ECtHR held that the right to vote may only be limited in the case of a narrowly defined group of persons who serve a long prison sentence (no. 20201/04, 8 April 2010, para. 28). In Söyler vs Turkey, the ECtHR took the view that deprivation of all persons serving a prison sentence of the right to vote is not in accordance with the Convention (no. 294411/07, 17 September 2013, para. 42). According to the Court *en banc*, a ban according to which no person who is serving a prison sentence can vote in parliamentary elections is in accordance with § 57 of the Constitution.

64. The Court *en banc* emphasises that the state must implement international agreements and can do so via its various bodies. Various bodies contribute to the implementation of international agreements within the limits of their competence. The Supreme Court reviews the constitutionality of rules based on a specific request and type of procedure. Both the Riigikogu and the Chancellor of Justice submitted in their opinions presented to the Supreme Court that depriving all persons who are serving a prison sentence from the right to vote in parliamentary elections is against the Constitution. The Riigikogu can, on its own initiative, replace the unconstitutional rules with constitutional ones. The Chancellor of Justice is competent to initiate abstract constitutional review proceedings regarding rules that, in the estimate of the Chancellor of Justice, are unconstitutional.