



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 18 October 2023

in Case No. 2022-33-01

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

having regard to the constitutional complaint of person L,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), as well as Section 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

at the court hearing of 19 September 2023, examined in written procedure the case

**“On Compliance of Section 10 (2) and Para 1 of Section 15 (1) of the Military Service Law with the First Sentence of Article 91 and Article 102 of the Constitution of the Republic of Latvia ”.**

## The Facts

1. Section 10 (2) of the Military Service Law provides: “A soldier has the right to be a member of such associations and foundations which do not have a political

nature, as well as to establish associations and foundations for soldiers and participate in other non-political activities if such activities do not interfere with the performance of service duties.”

Pursuant to Para 1 of Section 15 (1) of the Military Service Law, a soldier is prohibited from engaging in political activities, joining trade unions, organising strikes and participating in them.

**2. The applicant – person L** (hereafter – the Applicant) – holds that Section 10 (2) and Para 1 of Section 15 (1) of the Military Service Law (hereafter – the contested provisions) violate the principle of legal equality, included in the first sentence of Article 91 of the Constitution of the Republic of Latvia (hereafter – the Constitution) and restrict her right to join political parties, included in Article 102 of the Constitution. The Applicant is a soldier in professional military service. Allegedly, the contested provisions prohibit the Applicant from defending her opinions regarding vaccination against Covid-19, by forming with other persons a political party.

It is contended that the contested provisions violate the principle of legal equality, included in the first sentence of Article 91 of the Constitution, because the prohibition to join political parties has not been established with respect to employees of public administration and civil service employees who are involved in ensuring public security and order, national guards, and reserve soldiers. National guards and reserve soldiers are said to be parts of armed society, they also have a certain role in performing combat tasks and they often serve in units together with soldiers. Likewise, also civil servants and employees have significant impact on strategic, operational and tactical decisions.

The Applicant holds that the differential treatment has been established in such legislative process that is incompatible with the principle of good governance. Allegedly, the legislator had not examined the necessity of differential treatment.

The prohibition to join political parties, set out in the contested provisions, had appeared at the time when the National Armed Forces had not existed yet; however, at present such prohibition can no longer be justified since each individual may be politically active. For political parties to be publicly recognised and strong, there are no grounds for prohibiting a group of society from being active in them. Allegedly, the contested provisions do not reach the aim of preventing the risks of armed formations, hostile towards the government, or ideological impact, since numerically the largest part of the manpower in the National Armed Forces consists of national guards who may be members of political parties.

It is maintained that the contested provisions are incompatible also with the right to join political parties, included in Article 102 of the Constitution. The legitimate aim of the restriction on fundamental rights, included in the contested provisions, could be the political neutrality of a soldier; however, it could be achieved by measures that restrict a soldier's fundamental rights to a lesser extent. Namely, the legislator could establish for soldiers the same restriction on fundamental rights as the one set for the national guards – the right to be a member of a political party with the prohibition to engage in canvassing or other political activities at the place of service. Likewise, the benefit that society gains through the contested provisions is said to not outweigh the harm inflicted upon the Applicant. The fact that a person is a soldier, allegedly, does not immediately mean that he could influence political processes.

**3. The institution that issued the contested act – the *Saeima*** – holds that the contested provisions comply with the first sentence of Article 91 and Article 102 of the Constitution. Likewise, the *Saeima* notes that, in the present case, legal proceedings in the part regarding the compliance of the contested provisions with the first sentence of Article 91 of the Constitution should be terminated.

The *Saeima* holds that it is essential to take into consideration that soldiers are in special public service that has been entrusted with important tasks related to

the defence of national security. Therefore, the legislator enjoys broad discretion in establishing restrictions for persons in military service.

Allegedly, the restriction on fundamental rights, included in Article 102 of the Constitution, had been established by law, adopted in due procedure, and it has a legitimate aim – to protect the democratic state order and public security. The prohibition for a soldier to become a member of a political party is aimed at ensuring political neutrality of the professional military service, efficient performance of service duties and effective civilian control over the National Armed Forces. The restriction on fundamental rights, established by the contested provisions, is said to be suitable for reaching the legitimate aims. The contested provisions deter soldiers from becoming involved in gaining political power in the state and exclude the possibilities for political parties to use soldiers in order to reach their political aims. Moreover, separation between the political and military areas reinforces society's conviction that each soldier and the professional military service in general are politically neutral.

If a soldier would be allowed to establish a political party and be its member then it would be impossible to maintain the same extent of political neutrality of soldiers and professional military service, as well as society's confidence in this neutrality. It would be impossible to ensure the same quality in the activities of professional military service because a soldier would be obliged to dedicate certain amount of time to political activities. The military area would merge with politics, and this could hinder effective civilian control over the National Armed Forces.

A soldier, even without being a member of a political party, may participate in the elections of the *Saeima*, local governments and the European Parliament, national referenda and legislative initiatives. Hence, a soldier has not been fully deprived of his political rights. The contested provisions, allegedly, reinforce society's confidence that a soldier does not represent the opinion of a separate political party. Society's trust in soldiers is of particular importance, in view of the tasks entrusted to them.

With respect to the first sentence of Article 91 of the Constitution, the opinion that the persons referred to in the application are not in similar and

comparable circumstances is stated in the written reply. The National Armed Forces have been entrusted with a special function of the State, which is said to be sufficiently specific to disallow comparing soldiers with other persons employed in public administration. Reserve soldiers are said to constitute the reserves of the National Armed Forces, they are not in professional military service and can be conscripted therein only if necessary. Likewise, national guards are not in professional military service, and a soldier's service is said to differ from a national guard's service. Usually, persons who wish to participate in performing tasks related to the national defence in the time that is free from their main occupation become national guards.

**4. The summoned person – the Ministry of Defence** – holds that the contested provisions comply with the first sentence of Article 91 and Article 102 of the Constitution.

Due to their specific nature, the National Armed Forces are said to be a very powerful public structure. Therefore, highly effective system of democratic control over them is required in order to exercise the power at the disposal of the National Armed Forces effectively and responsibly. Political neutrality is said to be one of the elements in the effective system of democratic control.

Allegedly, the restriction on a soldier's political rights and freedoms is one of the measures (alongside the principle of separation of powers) for preventing the possibility of abusing the area of defence for political purposes because the area of security is focusing mainly on national defence, which is one of the main tasks of the State. Simultaneously, this restriction excludes the possibility for political organisations to influence through their members the fulfilment of the functions that the National Armed Forces have. Likewise, it promotes public trust in the National Armed Forces, which is needed to make society open to cooperation with the National Armed Forces and to providing active support to them. Soldiers in professional service can use other mechanisms to protect their rights and legal interests, e.g., submit applications to the Ombudsman's Bureau, appeal in court

decisions adopted with respect to them and participate in drafting legal regulation that they prefer with the mediation of deputies.

The Ministry of Defence notes that soldiers are not in a comparable situation with national guards or reserve soldiers. Not only the type of service but also the scope in which social welfare is ensured differs.

**5. The summoned person – the Ministry of Justice** – holds that the contested provisions comply with the first sentence of Article 91 and Article 102 of the Constitution.

Allegedly, the prohibition for a soldier to be a member of a political party is aimed at having politically neutral National Armed Forces that are subject to civilian control in order to separate the political and military areas, as well as to prevent soldiers' conflict of interests and any external influence on the performance of the tasks of professional military service and the career course in service.

The prohibition, established by the contested provisions, is said to ensure that a soldier, while in professional military service, is not subject to the impact of political parties and cannot be used for reaching political aims. Thus, it is ensured that a soldier maintains political neutrality and society's trust in it is reinforced. Since the National Armed Forces perform special functions of the State, i.e., guard the territorial integrity of the State and democratic state order, the restriction on fundamental rights, included in the contested provisions, is said to be necessary in a democratic society for the protection of the democratic state order, national security, and the unity of the national territory. It is contended that the restriction on fundamental rights, established by the contested provisions, is suitable for reaching the legitimate aims.

In adopting the contested provisions, the legislator has assessed, on which persons, belonging to the National Armed Forces, the restriction on political rights should be imposed, and has not envisaged such restrictions for the entire corps of the National Armed Forces. Thus, the principle of proportionality has been

complied with. Significant difference between national guards and soldiers exists, and these two groups of persons are not in similar and comparable circumstances.

A soldier can express his political stance in other ways, e.g., by voting at the elections of the *Saeima*, local governments, the European Parliament, by participating in national referenda and legislative initiatives, as well as by deciding on the laws, adopted by the *Saeima*, and amendments to the Constitution. Likewise, a soldier has not been prohibited from submitting applications to state and local government institutions. Moreover, a soldier has the right to be a member of such associations and foundations, the aim of which is not political activity, as well as to establish soldiers' associations and foundations and take part in non-political events if such activities do not hinder fulfilment of the duties of service.

The Ministry of Justice is of the opinion that the restriction that prohibits soldiers from joining in political parties should be reviewed regularly; however, at present, democratic traditions have not yet become fully consolidated in Latvia. Moreover, the political and geopolitical context also should be taken into account.

**6. The summoned person – the National Armed Forces** – holds that the contested provisions comply with the first sentence of Article 91 and Article 102 of the Constitution.

Other persons who belong to the corps of the National Armed Forces – employees, national guards, reserve soldiers, as well as the employees of the institutions belonging to the system of the Ministry of the Interior and those employed in public service are said to be in different circumstances than the soldiers in professional service. The tasks that have been entrusted to these persons are fundamentally different. The prohibition established in the Military Service Law for a soldier of professional service to be a founder and a member of a political party, as well as to engage in political activities is differential approach, chosen by the legislator, and it is justified in the democratic society of Latvia.

The prohibition for a soldier in professional service to be a founder and a member of a political party, as well as to engage in political activities is said to be a proportionate restriction on fundamental rights. A restriction like this is not only

suitable for reaching the legitimate aims – protection of the democratic state order and public security but is even the sole effective measure that allows reaching its legitimate aims in the required quality. The benefit that society gains by the contested provisions, i.e., stability of the democratic state order, which comprises also the political neutrality of military service, significantly outweighs the infringement on a soldier's fundamental rights.

**7. The summoned person – the Ombudsman** – holds that the contested provisions comply with the first sentence of Article 91 and Article 102 of the Constitution.

The contested provisions had been adopted in due procedure. National defence is said to be the guarantee for the State's sovereignty, and national security is said to depend directly on effective fulfilment of the function of national defence. The restriction that prohibits a soldier from being a member of a political party is said to have a legitimate aim – maintaining the political neutrality of the National Armed Forces and preventing crimes motivated by radicalism.

The measures, chosen by the legislator, are said to be suitable for reaching the legitimate aim, and it cannot be reached by measures that would be less restrictive upon the Applicant's fundamental rights and would be as effective. A political party has the task of participating in political processes and proposing its candidates for elections so that the party would be represented in political institutions and could exercise political power. Thus, the aims of a political party are contrary to the legitimate interests of the State – to maintain politically neutral military service.

Allegedly, a soldier has several alternative possibilities to express his position regarding matters that are important for the work of the State and local governments. A soldier may vote at elections, participate in national referenda and legislative initiatives, as well as be a member of associations and foundations which do not have a political nature. Likewise, soldiers may establish soldiers' associations and foundations and participate in other non-political events if such activities do not interfere with the performance of the duties of service.

The Ombudsman holds that soldiers in professional service are not in similar and comparable circumstances with national guards, employees of the National Armed Forces, reserve soldiers, as well as officials of the institutions belonging to the system of the Ministry of the Interior and the Prison Administration, and civil servants.

**8. The summoned person – *Dr. iur. Jānis Pleps*** – notes that the legislator may establish the obligations of political neutrality and constitutional loyalty to the National Armed Forces. All states need their national armed forces to ensure internal and external security for their inhabitants. Military structures may become participants in political fights of the parties with their own political programme and, thus, cause actual threats to the democratic state order. Therefore, within the framework of the principle of democratic state order, it is admissible to demand and ensure political neutrality and non-partisanship of military persons.

**9. The summoned person – *Dr. sc. pol. Nora Vanaga*** – points out that professional military service is incompatible with membership in a political party. The Applicant can express her civic interest by regularly voting at elections, meeting members of the *Saeima* and participating in apolitical associations.

If a person has a strong civic interest in influencing political processes, legal acts allow him to perform partially equivalent service in the National Guard, and service in the National Guard may be combined with political activities.

The duties of soldiers differ from the duties of national guards and reserve soldiers, and the respective services are not comparable. If soldiers were allowed to engage in political activities, the risk that sensitive information could be leaked and the risks for national security, following from it, could be discerned. Moreover, in such a case the State would not have sufficient capacity and resources to control the activities of political parties, conducted by the soldiers in professional military service.

Allegedly, the National Armed Forces are one of those institutions that society trusts the most, contrary to the *Saeima*, the Cabinet and political parties,

which are the least-trusted by society. Thus, not associating the professional military service with political parties is a very important pre-condition for public trust.

*Dr. sc. pol.* Nora Vanaga, taking into consideration the experience of Austria, considers that permission to a soldier to engage in political activities might have detrimental impact on the soldier's own interests. A soldier's possibilities to step up higher on the career ladder would depend on his political affiliation. The opinion includes reference to the need of taking into consideration geopolitical events and their repercussions in society, which is said to testify of the need to retain the prohibition, established in the contested provisions, in the interests of national security.

### **The Findings**

**10.** The Applicant requests the Constitutional Court to review the compliance of the contested provisions with the right to freedom of association, included in Article 102 of the Constitution, as the contested provisions prohibit her, as a soldier in professional service, from being a member of a political party. Likewise, the application includes the request to review the compliance of the contested provisions with the principle of legal equality, included in the first sentence of Article 91 of the Constitution, because the prohibition to become a member of a political party has not been established with respect to other comparable groups of persons.

**10.1.** Section 10 (2) of the Military Service Law envisages a soldier's right to be a member of such associations and foundations which do not have a political nature, as well as to establish soldiers' associations and foundations and participate in other non-political events if such activities do not interfere with the performance of service duties. Para 1 of Section 15 (1) of this Law, in turn, prohibits a soldier from engaging in political activities, join trade unions, organise strikes and participate therein.

If the provisions that are contested in a constitutional complaint pertain to a broad set of different situations the Constitutional Court specifies the extent to which it will review the constitutionality of the contested provisions (*see, for example, Judgement by the Constitutional Court of 17 February 2023 in Case No. 2022-05-01, Para 10.1.*).

The contested provisions regulate how a soldier may use different manifestations of the right to assembly and association. However, it follows from the application that the Applicant does not object to all restrictions on a soldier's right to freedom of assembly and association but only to the restriction, which prohibits a soldier from being a member of a political party. The *Saeima* and the summoned persons also have provided opinions on the prohibition for a soldier to become a member of a political party.

The prohibition for a soldier to be a member of a political party follows from both contested provisions – both from the right, included therein, to be a member of only such foundations which do not have a political nature and from the prohibition to engage in political activities. Thus, with respect to a soldier's participation in a political party, the contested provisions regulate the same legal relations.

Hence, in the present case, the constitutionality of the contested provisions as united legal regulation must be reviewed, insofar it prohibits a soldier from being a member of a political party.

**10.2.** The Applicant holds that the contested provisions place disproportionate restrictions on a soldier's right to the freedom of association.

It is also alleged that the contested provisions violate the principle of legal equality because the prohibition to be a member of a political party has not been established with respect to employees of public administration and civil servants who are involved in ensuring public security and order, national guards, and reserve soldiers.

In view of the content of the contested provisions, actual circumstances in the case and the Applicant's arguments regarding the alleged incompatibility of the contested provisions with the Constitution, it can be concluded that the basic

matter in the present case pertains to the restriction of a soldier's right to association, included in Article 102 of the Constitution.

Hence, the Constitutional Court will review, first and foremost, the compliance of the contested provisions with Article 102 of the Constitution.

**11.** Article 102 of the Constitution provides that everyone has the right to form and join associations, political parties and other public organisations.

The right to the freedom of association, included in Article 102 of the Constitution, ensures to persons the possibility to defend their legal interests by joining in associations, in order to reach shared aims. In exercising their right to the freedom of association, persons may participate in democratic processes (*see Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 17*). The Constitutional Court has recognised a person's right to participate in political processes and the possibility to influence decisions on matters pertaining to this person's life as one of the most essential rights in a democratic state governed by the rule of law. Democratic participation ensures the legitimacy and effectiveness of democracy, as well as facilitates the rule of law, democratic public administration, respect for fundamental rights, social inclusion, and economic development (*compare, see Judgement by the Constitutional Court of 12 March 2021 in Case No. 2020-37-0106, Para 29.1.*). Democratic participation also fosters society's trust in the state power.

Membership in a political party is one of the manifestations of the right to freedom of association. A political party is a union of persons, the members of which have similar political views, which has certain ideology and its main aim is gaining political power, exercising it in the State in accordance with the aims and principles, included in the party's programme (*see Judgement by the Constitutional Court of 10 May 2013 in Case No. 2012-16-01, Para 19*). Political parties are an essential pre-condition for the existence of a democratic state order and they form a link between society and the state power, ensuring society's organised participation in political processes (*compare, see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-36-01, Para 15.2.*). Democracy is

characterised by diversity of opinions and political parties are the ones that represent the different opinions of society. This facilitates balancing of various interests in political decisions. The European Commission for Democracy through Law (the Venice Commission) also has pointed out that political parties are an integral part of democracy, forming the foundations to a pluralist society (*see Joint Guidelines of the European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights of 17 December 2014 on Freedom of Association, CDL-AD(2014)046, Para 15. Available: [venice.coe.int](http://venice.coe.int)*).

The Applicant is a soldier and she wishes to be a member of a political party to defend her opinions. However, the contested provisions prohibit her from being simultaneously both a soldier and a member of a political party. If the Applicant were to become a member of a political party she would no longer be able to be in professional service.

**Thus, the contested provisions restrict the Applicant's right to the freedom of association, included in Article 102 of the Constitution.**

**12.** In reviewing the proportionality of a restriction on fundamental rights, it must be verified, first and foremost, whether the restriction has been established by law, adopted in due procedure. The restriction on fundamental rights should be established in such legislative procedure that complies with the principle of good legislation (*see Judgement by the Constitutional Court of 29 September 2022 in Case No. 2022-08-01, Para 13*).

The Military Service Law was adopted on 30 May 2002, promulgated in the official journal "*Latvijas Vēstnesis*" No. 91, published on 18 June 2002, and entered into force on 1 July 2002. Para 1 of Section 15 (1) of the Military Service Law has not been amended. Whereas Section 10 (2) of the Military Service Law has been amended by the law "Amendments to the Military Service Law", which was adopted on 17 September 2009, promulgated in the official journal "*Latvijas Vēstnesis*" No. 158, published on 6 October 2009. By these amendments, the

words “public organisations” were replaced by the words “associations and foundations”.

The Constitutional Court does not doubt that the contested provisions had been adopted and promulgated in the procedure set out in the Constitution and the Rules of Procedure of the *Saeima* and are also accessible in accordance with statutory requirements. Likewise, the Constitutional Court does not doubt that the contested provisions had been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from them and to forecast the consequences of application thereof.

The Applicant expresses doubts as to whether the contested provisions had been adopted in compliance with the principle of good legislation – allegedly, the preparatory documents related to drafting of the respective legal acts do not reveal the necessity for the differential treatment of soldiers and employees of public administration, as well as civil servants who also participate in ensuring public security and order, national guards, and reserve soldiers. Such considerations need to be verified by reviewing the compliance of the contested provisions with the principle of legal equality.

**Thus, the restriction on fundamental rights, included in the contested provisions, has been established by law, adopted in due procedure.**

13. Any restriction on fundamental rights should be founded on circumstances and arguments defining the need for it, i.e., the restriction may be established for the sake of important interests – a legitimate aim.

It is noted in the *Saeima*'s written reply that the legitimate aims of the restriction on fundamental rights are protection of the democratic state order and protection of public security. Allegedly, the contested provisions are aimed at ensuring the political neutrality of active military service, effective performance of the duties of active military service, and effective civic control over the National Armed Forces. The Applicant agrees that the political neutrality of military service could be the aim of the restriction.

A soldier is a Latvian citizen who performs active service, which means direct performance of military service in the status of a soldier and includes professional service. Soldiers belong to the corps of the National Armed Forces – an aggregate of military formations, formed by a military organised, trained and armed part of the nation. The goal of the National Armed Forces is to defend the sovereignty and territorial integrity of the Latvian State and its population against aggression (*see Section 2 and Para 1 of Section 5 (2) of the National Armed Forces Law and Para 1, 2, 4 and 5 of Section 2 of the Military Service Law*). They ensure defence of the State against external threats and provide support in preventing internal conflicts (*see Opinion of the Ministry of Defence, Case Materials, Vol. 1, p. 87*). Thus, the National Armed Forces perform the function of national defence.

National defence is an important area of the State's sovereign power and protection of the democratic state order and public security depend upon effective performance of this function. In view of the National Armed Forces' level of readiness and professionalism, their command capabilities and equipment, it should be ensured that the tasks of national defence that they have been entrusted with are performed in compliance with their purpose. Political neutrality of the National Defence Forces is one of the means for ensuring effective performance of the national defence function. The European Court of Human Rights also has recognised that political neutrality of the national armed forces is a legitimate requirement in every democratic society because the national armed forces are the guardians of democracy and constitutional values (*see Decision by the European Court of Human Rights of 13 February 2007 in Case "Erdel v. Germany", Application No. 30067/04*).

Political neutrality of the National Armed Forces is directed at separating the political and military areas. It limits both the involvement of the National Armed Forces in political processes and using the National Armed Forces therein. Namely, political neutrality of the National Armed Forces means that they do not influence political forces and implement unquestioningly the decisions adopted in the area of national defence. Likewise, political neutrality of the National Armed Forces means that they are not subject to political influence and are not used for

reaching the aims of separate political parties. Moreover, political neutrality is important also in soldiers' mutual relations – its aim is to prevent schism among the soldiers (*see also: Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations. Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, Geneva Centre for Security Sector Governance, 2021, pp. 76–77. Available: osce.org*).

Political neutrality of the National Armed Forces facilitates effective civilian control over them because implementation of effective control requires separation of the political and military area. Civilian control is an integral element of democracy, it is implemented by the *Saeima* and other authorised institutions. This means that the civilian and not the military governance holds the ultimate power over the National Armed Forces (*see: European Commission for Democracy through Law (Venice Commission) Report of 23 April 2008 on the Democratic Control of the Armed Forces, CDL-DEM(2008)004, Para 68–76. Available: venice.coe.int*). Political neutrality of the National Armed Forces and civilian control over them also facilitate society's trust in the National Armed Forces.

Thus, the prohibition for a soldier to be a member of a political party, established in the contested provisions, is aimed at ensuring political neutrality of the National Armed Forces, to the corps of which soldiers belong. Political neutrality of the National Armed Forces facilitates effective performance of the national defence function. Through this, protection of the democratic state order and public security is ensured.

**Thus, the restriction on fundamental rights, included in the contested provisions, has legitimate aims – protection of the democratic state order and public security.**

14. In establishing whether the restriction on fundamental rights is proportionate, the Constitutional Court, first and foremost, verifies whether the

restriction is suitable for reaching the legitimate aim, i.e., whether the legitimate aim can be reached by the chosen measures.

The legislator, in adopting the contested provisions, has chosen, with respect to a soldier, to fill in the content of the neutrality of the National Armed Forces by envisaging a prohibition for him to be a member of a political party. A political party is an organisation that is established in order to perform political activities, to participate in election campaigns, to nominate candidates, to participate in the work of the *Saeima*, local government councils or the European Parliament, to implement the party programme with the intermediation of deputies, as well as to be involved in the establishment of public administrative bodies, thus gaining and exercising political power. A member of a political party has the obligation to observe the articles of association of the party and participate in the work of the party (*see the Law on Political Parties, Section 2 (1) and Section 29 (2)*).

Prohibition to be a member of a political party ensures that a soldier does not become involved in gaining and exercising political power, does not make political decisions, and is not used for reaching the aims of a political party. Thus, the separation between the political and military areas is maintained, and, thus, soldiers and the National Armed Forces are politically neutral, which also facilitates society's trust in them. Hence, the contested provisions ensure effective performance of the national defence function.

**Therefore, the restriction on fundamental rights, established in the contested provisions, is suitable for reaching the legitimate aim – protection of democratic state order and public security.**

15. The restriction on fundamental rights, established by the contested provisions, is necessary if there are no other measures that would be as effective and the choice of which would be less restrictive on persons' fundamental rights. A more lenient measure is not any other measure but only such that allows reaching the legitimate aim in at least the same quality (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 14*).

The Applicant holds that a solution that would allow a soldier to be a member of a political party but would limit his right to canvass or to engage in other political activities at the place of service would be less restrictive on soldiers' right to the freedom of association. The *Saeima*, in turn, points out that this measure would not allow reaching the legitimate aims in the same quality since it would decrease the political neutrality of the National Armed Forces.

Being a member of a political party, a soldier could influence political decisions and the political party could use him in order to reach its political goals. This could lead to merging of the political and military areas. Likewise, it could diminish society's trust in the National Armed Forces. A restriction that would deny a soldier the possibility to canvass or engage in other political activities at the place of service could prevent schism among soldiers but would allow reaching, in equivalent quality, only one of the aims set for political neutrality and would not ensure equally effective performance of the national defence function. Hence, the legitimate aims – protection of a democratic state order and public security – would not be reached in the same quality.

**Thus, there are no more lenient measures that would allow reaching the legitimate aims of the restriction on fundamental rights in at least the same quality.**

16. In reviewing the compliance of the restriction on fundamental rights with its legitimate aim, it should be verified whether the adverse consequences that occur for a person as the result of the restriction on his fundamental rights do not outweigh the benefit that society in general gains from this restriction (*see, for example, Judgement by the Constitutional Court of 7 March 2017 in Case No. 2016-07-01, Para 25*).

In determining the course of military service, the legislator must balance the interests of national defence with a soldier's fundamental rights. Hence, the Constitutional Court will verify whether the adverse consequences, caused for a soldier by the prohibition to become a member of a political party, established in

the contested provisions, do not outweigh the benefit that society gains from the requirement of political neutrality set for a soldier.

It is stated in the Preamble to the Constitution that the people of Latvia protect their sovereignty, independence of the Latvian State, its territory, territorial integrity and democratic state order. To fulfil this obligation, significant role has been granted to the National Armed Forces, the regular corps of which are formed by soldiers. Therefore it is important that society trusts soldiers and the National Armed Forces. Society's trust in the National Armed Forces may impact a person's willingness to become involved in ensuring national defence. Currently, the National Armed Forces enjoy very high level of public trust – according to the data of May and June 2023, 72 per cent of society trust the National Armed Forces (*see the European Commission's Survey . Eiropas Komisijas pētījumu "Standard Eurobarometer 99". Available: europa.eu*).

Democracy is characterised by political competition between the opinions on the best political decision, represented by various groups of persons. A soldier, however, in view of the task, entrusted to him, to be the defender of the State, must maintain professionalism and neutrality and ensure protection for the State of Latvia and its democratic order irrespectively of political competition. It follows from the special nature of military service that such obligations and responsibility is imposed upon a soldier that might restrict him more than other persons (*see Decision by the Constitutional Court of 14 December 2021 on Terminating Legal Proceedings in Case No. 2021-11-01, Para 11.2.1*). Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also provides that restrictions on the right to freedom of association may be imposed on persons who are members of the armed forces. It is also noted in the Recommendation by the Council of Europe that these persons may be denied the right to be a member of a political party, in particular, if these persons are in active service (*see Council of Europe Recommendation on human rights of members of the armed forces (CM/Rec(2010)4), Para 56. Available: coe.int*).

Prohibition to a soldier to be a member of a political party ensures that society can trust soldiers and the National Armed Forces, as well as to expect that

the national defence will be implemented in the interests of the entire society rather than in the interests of the part of society, represented by the specific political party.

The contested provisions foster also professionalism of the National Armed Forces, i.e., the fact that granting of service ranks and appointment to positions are not subject to either internal or external risk of politization. The service rank to a soldier is granted and soldier is appointed to a position both by members who belong to the corps of the National Armed Forces and by other institutions and representatives thereof. Thus, for example, the service ranks of officers are awarded by the President upon recommendation of the Minister for Defence, whereas the higher non-commissioned officer ranks – by the Commander of the National Armed Forces (*see Section 23, Section 24 and Section 32 of the Military Service Law*). A soldier's membership in a political party could have an impact on whether a soldier is granted a specific service rank and whether a soldier is appointed to a specific position (*see Dr. sc. pol. Nora Vanaga's Opinion in Case Materials, Vol. 1, p. 130*). The prohibition for a soldier to be a member of a political party ensures that membership in a political party is not used as a consideration on whether a soldier would be granted the respective service rank and whether he would be appointed to the respective position. Thus, the professionalism of the National Armed Forces in general is facilitated.

Moreover, the Constitutional Court, in assessing the society's benefit from the restriction on fundamental rights, takes into consideration also the geopolitical context. For a long time, the geopolitical situation in the Baltic Sea region has been affected by Russia's challenging and aggressive military and hybrid activities (*see Announcement of the Saeima of 24 September 2002 "On Approving the National Defence Concept"*). In 2022, after the war that Russia was waging in Ukraine grew into a full-scale invasion, the *Saeima* and, later, also the European Parliament recognised Russia as being a state sponsor of terrorism (*see Announcement by the Saeima of 11 August 2022 "On Russia's target attacks on Ukrainian civilians and public space" and Resolution of the European Parliament of 23 November 2022 on recognising the Russian Federation as a state sponsor of terrorism (2022/2896(RSP))*). Available: [europarl.europa.eu](http://europarl.europa.eu)). The security of the State of

Latvia is jeopardised by information and influence operations, actively deployed by Russia, using, *inter alia*, propaganda and disinformation (see *Public Report of the State Security Service on the Activities of the State Security Service in 2022*. Available: [vdd.gov.lv](http://vdd.gov.lv), and *Report by the Constitution Protection Bureau on Activities in 2022*. Available: [sab.gov.lv](http://sab.gov.lv)). Activists who support Russia's aggression carry out attacks on Latvia's cyberspace (see *Public Report on Performing CERT.LV Tasks in the 2<sup>nd</sup> Quarter of 2023*. Available: [cert.lv](http://cert.lv)). In such a geopolitical context, the need for politically neutral National Armed Forces is particularly pronounced. Summoned person *Dr. sc. pol.* Nora Vanaga points out that polarisation of opinions on geopolitical events can be observed in the Latvian society and, therefore, maintaining the political neutrality of the National Armed Forces and society's trust in them is of particular importance. Also the European Court of Human Rights, in assessing the proportionality of a restriction on human rights, takes into consideration the geopolitical context (see, for example, *Decision by the European Court of Human Rights of 23 May 2023 in Case "Gaponenko v. Latvia", Application No. 30237/18, Para 43*).

In assessing whether the prohibition for a soldier to be a member of a political party is proportional, the scope of this restriction on fundamental rights must be assessed, i.e., whether a soldier has the right to express his political opinions in other ways (compare, see *Judgement by the European Court of Human Rights of 20 May 1999 in Case "Rekvényi v. Hungary", Application No. 25390/94, Para 49 and Para 61*). The legislator has not restricted a soldier's political rights completely and a soldier may express his political position. A soldier may, for example, vote at the elections of the *Saeima*, local governments and the European Parliament, as well as participate in national referenda and legislative initiatives. Likewise, a soldier may support legislative initiatives. Moreover, the legislator has not restricted a soldier's right to the freedom of association completely because a soldier may establish such associations and foundations which do not have a political nature and be a member of the respective associations and foundations.

The Constitutional Court concludes that the benefit that society gains from the requirement of political neutrality set for a soldier outweighs the adverse

consequences that the prohibition to be a member of a political party causes for a soldier.

**Thus, the contested provisions, insofar they prohibit a soldier from being a member of a political party, comply with Article 102 of the Constitution.**

17. The Applicant holds that the contested provisions are incompatible with the principle of legal equality, included in the first sentence of Article 91 of the Constitution. Allegedly, soldiers are prohibited from being members of a political party; however, such prohibition has not been established with respect to employees of public administration and civil servants who are involved in ensuring public security and order, national guards, and reserve soldiers. The differential treatment has not been established by law, adopted in due procedure, likewise, it is alleged that it lacks objective and reasonable grounds.

The first sentence of Article 91 of the Constitution provides: “All human beings in Latvia shall be equal before the law and the courts.”

The principle of legal equality has been derived from the general principle of justice, which is a fundamental value of a democratic state governed by the rule of law. The principle of legal equality means that the treatment is similar in similar actual and legal circumstances, whereas in different circumstances it is different. The principle of legal equality prohibits state authorities from issuing such provisions that allow, without reasonable grounds, differential treatment of persons who are in accordance with certain criteria comparable circumstances (*see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-36-01, Para 12.1.*).

To assess whether the contested provisions comply with the principle of legal equality, falling within the scope of the first sentence of Article 91 of the Constitution, the Constitution Court must clarify:

1) whether and which persons (groups of persons) are in similar and in accordance with certain criteria comparable circumstances;

2) whether the contested provision envisages equal or differential treatment of these persons (groups of persons);

3) whether such treatment has been established by law, adopted in due procedure;

4) whether such treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the proportionality principle has been complied with (*see, for example, Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-28-0306, Para 11*).

**18.** In the assessment whether the principle of legal equality has been respected, the decisive issue is whether several groups of persons are united by a shared feature that is essential to them. To clarify whether and which groups of persons are in similar and in accordance with certain criteria comparable circumstances, the main feature that unites these groups must be determined (*see Judgement by the Constitutional Court of 23 November 2015 in Case No. 2015-10-01, Para 17*).

The Applicant holds that soldiers are in similar and in accordance with certain criteria comparable circumstances with employees of public administration and civil servants who are involved in ensuring public security and order, national guards, and reserve soldiers. The *Saeima*, however, points out that soldiers and the said groups of persons are in different and incomparable circumstances.

The Constitutional Court will verify whether soldiers are in similar and in accordance with certain criteria comparable circumstances with each group of persons, referred to in the application.

**18.1.** It is stated in the application that one group of persons who are in similar and in accordance with certain criteria comparable circumstances with soldiers are employees of public administration who are involved in ensuring public security and order, e.g., employees of the National Armed Forces. The *Saeima*, in turn, notes: since a soldier performs public service, soldiers are not comparable with persons whose legal employment relations have been established on the basis of an employment contract.

The Constitutional Court already has recognised that public service differs significantly from legal employment relations that have been established on the basis of an employment contract. Public service is the public legal status of persons who have been entrusted with the performance of the tasks of the State. Therefore, employment in public service differs from employment on the basis of an employment contract both as regards legal aspects in establishing legal relations and the goal of the work to be performed. Persons in public service are in special relationship with the State, i.e., the rights of these persons are restricted and they have been imposed special obligations (*see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-41-01, Para 11.1.*).

Thus, soldiers and employees of public administration who are involved in ensuring public security and order are in different and incomparable circumstances.

**18.2.** The Applicant holds that soldiers are in similar and in accordance with certain criteria comparable circumstances with employees of civil service who are involved in ensuring public security and order, e.g., civil servants. The *Saeima*, however, holds that each type of public service is different.

Although relations in public service share certain features, employees in each type of public service perform different tasks. Military service is principally different from any other type of public service (*compare, see Decision by the Constitutional Court of 14 December 2021 on Terminating Legal Proceedings in Case No. 2021-11-01, Para 11.2.1.*). The most essential difference of military service compared to other types of public service are the existing national imperative military interests, on which it is based and which are aimed at ensuring the existence and sovereignty of the State (*see Judgement by the Senate of 6 February 2012 in Case SKA-81/2012 (A420567210), Para 12*). Military service demands from a soldier compliance with strict military discipline, ability to adapt to changing circumstances, special skills, and physical fitness. A soldier's work in military service is linked to a high level of risk to health and life.

Hence, soldiers and employees of other type of public service who are involved in ensuring public security and order are in different and incomparable circumstances.

**18.3.** The Applicant holds that soldiers and also national guards are in similar and in accordance with certain criteria comparable circumstances. National guards are said to be the armed part of society that, together with soldiers, constitute the corps of the National Armed Forces. The *Saeima*, however, is of the opinion that these groups of persons are not in similar and in accordance with certain criteria comparable circumstances because national guards are not in active service and are involved in the performance of tasks related to national defence only at the time when they are free from their main occupation.

Soldiers and national guards belong to the corps of the National Armed Forces and are the armed part of the nation (*see the National Armed Forces Law, Section 1, Section 3 (1) and Section 5 (2)*). The purpose of the professional service and the National Guard is to ensure national defence. Upon commencing their service, a soldier and a national guard take the oath, pledging to defend the State of Latvia and its independence (*see the Military Service Law, Section 4 (1), and the National Guard of the Republic of Latvia Law, Section 5 (1)*).

However, several shared features *per se* not always serve as a sufficient argument for establishing that two groups of persons are in similar and comparable circumstances. The Constitutional Court must also examine whether significant considerations do not exist pointing to the fact that such groups of persons are not in similar and comparable circumstances (*compare, see Judgement by the Constitutional Court of 9 April 2013 in Case No. 2012-14-03, Para 17.2.*). Therefore, to verify whether soldiers and national guards are in similar and in accordance with certain criteria comparable circumstances, the Constitutional Court will examine the tasks of the professional service and those of the National Guard.

Professional service is a full-time job in ensuring national defence. A soldier is prohibited from combining military service with another position or job, which is not permitted by law. During active service, a soldier of professional service

receives remuneration – a monthly salary (*see the Military Service Law, Section 12(1), Para 2 of Section 15 (1) and Section 48 (1), and the Law on Remuneration of Officials and Employees of State and Local Government Authorities, Section 9*). A soldier is under special subordination to the State. A soldier is always ready to serve, and the length of a soldier's day in service depends on the service needs (*see Opinion of the Ministry of Defence, Case Materials, Vol. 1, p. 88*). The professional service contract cannot be terminated before the end of term upon the soldier's initiative. It can be terminated only if the parties agree on it or upon the initiative of the management (*see the Military Service Law, the first and the second part of Section 43*). Pursuant to the order by the commander of the National Armed Forces, in order to perform tasks of service, a soldier needs clearance to access official secret. Soldiers also become involved in the highest management of the National Armed Forces, by taking higher positions, e.g., the position of the commander of the National Armed Forces and the commander of the National Guard (*see Cabinet Regulation of 17 August 2010 No. 775 "Regulation on the Positions Corresponding to the Service Ranks of Soldiers and Higher Officers of National Guards"*).

The National Guard, in turn, is a component of the National Armed Forces, the objective of which is to involve the citizens of Latvia in the defence of the State territory and society. Service in the National Guard is not active service and national guards serve in their free time. National guards are involved in the performance of the tasks of the National Guard and training in the time free from main job or studies up to 30 days per year, except for the cases stipulated in law when a national guard may be involved for a longer period of time. A national guard may terminate the contract on serving in the National Guard on his own initiative (*see the National Guard of the Republic of Latvia Law, Section 2 and Section 6, and Para 1 of Section 29 (1)*).

Thus, the task of the professional service is to form that part of the National Armed Forces whose service is a full-time job, a soldier is always ready to serve and may participate in the management of the National Armed Forces. Whereas the task of the service in the National Guard is to involve in the defence of the

State territory and society a wider range of Latvian citizens, who are engaged in it in their free time. This is one of the ways how Latvian citizens may participate in fulfilment of one of their obligations referred to in the Preamble to the Constitution, i.e., to defend their State. In view of the different roles of soldiers and national guards in ensuring national defence, also the levels of responsibility and military skills differ – it is higher for a soldier than for a national guard (*see Dr. sc. pol. Nora Vanaga's Opinion in Case Materials, Vol. 1, p. 128*). Therefore, the involvement of a soldier and a national guard in the performance of the tasks of the National Armed Forces and the intensity of service differ.

Thus, soldiers and national guards are in different and incomparable circumstances.

**18.4.** The Applicant has stated that soldiers and reserve soldiers are in similar and in accordance with certain criteria comparable circumstances. The *Saeima*, however, holds that reserve soldiers perform only such obligations that would allow, in case of necessity, to conscript them into active service.

Reserve soldiers serve in the reserve of the National Armed Forces, which belongs to the corps of the National Armed Forces (*see the National Armed Forces Law, Section 3 (1), and the Military Service Law, Para 7 of Section 2*). However, this *per se* does not mean that soldiers and reserve soldiers would be in similar and in accordance with certain criteria comparable circumstances.

For example, soldiers who have been retired from professional service are included into the corps of reserve soldiers if they have successfully completed a basic training course for a soldier at the level of individual training and have not been removed from military service records or admitted to the National Guard. A reserve soldier has the duty to arrive to military training and medical examination, to maintain and improve the combat knowledge, skills and preparedness necessary for military speciality, as well as, in the event of mobilisation, to perform what has been determined in the summons issued by the structural unit for the record of the National Armed Forces' reserve. Although during military training, a reserve soldier is in active service and has the status of a soldier, the course of military training is limited in time. For example, reserve soldiers from soldiers' corps are

conscripted for military training, in total, up to six months, and up to 30 days within one year. The interval between regular military trainings, in which reserve soldiers are involved, is not less than four years (*see the Military Service Law, Para 7 of Section 2, Section 63 (2), Section 65 (2) and the second, the third and the fourth part of Section 66*). Thus, reserve soldiers' duties are linked to ensuring their readiness, if necessary, to participate in the defence of the State, whereas for a soldier ensuring defence of the State is a full-time job.

Hence, soldiers and reserve soldiers are in different and incomparable circumstances.

The Constitutional Court concludes that the groups of persons, identified in the application, as regards membership in a political party are not comparable in terms of the principle of legal equality.

**Thus, the contested provisions, insofar they prohibit a soldier from being a member of a political party, comply with the first sentence of Article 91 of the Constitution.**

### **The Substantive Part**

On the basis of Sections 30–32 of the Constitutional Court Law, the Constitutional Court

**held:**

**to recognise Section 10 (2) and Para 1 of Section 15 (1) of the Military Service Law, insofar these provisions prohibit a soldier from being a member of a political party, as compatible with the first sentence of Article 91 and Article 102 of the Constitution of the Republic of Latvia.**

The judgement is final and not subject to appeal.

The judgment enters into force on the day it is published.

Chairperson of the court hearing

Aldis Laviņš