



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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**SEPARATE OPINION**  
**of Jānis Nemanis,**  
**Judge of the Constitutional Court,**  
**in Riga on 1 November 2023**  
**in Case No. 2022-33-01**

**“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”.**

On 18 October 2023, the Constitutional Court delivered its judgement in case No. 2022-33-01 “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”. I have a dissenting opinion to the majority of the Court, which regards that the corps of the National Armed Forces constitute different groups in the context of the equality principle and that the restriction on a soldier’s freedom to associate in political parties is proportional.

First of all, I am of the opinion that regular soldiers of the National Armed Forces, reserve soldiers and soldiers of the National Guard are comparable. In my opinion I am guided by Section 3 (1) of the National Armed Forces Law, which defines that the National Armed Forces are formed by both reserve, the National Guard, and the regular forces. All persons in these forces, except employees, are soldiers in the meaning of the Military Service Law. All soldiers give an oath with the same content and, in the eyes of society, equally represent

the State's military forces. Thus, in the context of the freedoms and restrictions defined for a soldier, they would be comparable. It is another matter if and what objective justifications exist for the different regulation on these soldiers' course of service.

Secondly and most importantly, I cannot subscribe to the majority's opinion that the restriction on a soldier's right to the freedom of political association is proportional and can be justified by concerns regarding the political neutrality of the National Armed Forces, prevention of the impact of subjective factors on the career growth, the threat posed by Russia, etc.

My opinion is based on my observations gained in life in military service and my conviction that broader involvement of society in the ranks of political parties and strengthening of political parties with the widest range of professions in society do not harm but, quite to the contrary, reinforce the democratic state order and the proximity of the state power to society.

The prohibition for a part of society, on the basis of its occupation, to participate in the activities of a political party, to provide its perspective, ideas, take part in deciding on who and how will lead the political party that is acceptable for this part of society, does not bring any benefit, apart from the semblance of "political neutrality". If we are satisfied with semblance, if we like pretence, then it can be like this. I cannot accept this. My views and my observations in life reveal that every person, irrespective of their occupation, is political – everyone has certain views on how the State's functioning should be improved, how an institution should operate, how these or other matters should be dealt with. We discuss it at home, with our friends, etc.: actually, we are already associating, following these precepts. Also in the present case, I do not think that the prohibition to associate in a political party would change the applicant's opinion, upon which her worldview is based.

Thus, at some point, society could be surprised to see the numerous and diverse opinions represented by soldiers in its armed forces because the soldiers would not have declared these opinions openly but kept these to themselves. It is important that these soldiers are united in the opinion regarding the defence of democratic state order.

In my opinion, in a state, the functioning of which is based on the representation of political parties in the decision-making institutions (the parliament, the government, local governments, etc.), it is dangerous to derogate people's interest in association in political parties, from the very beginning ascribing to this manifestation of association some kind of negative connotation – conflicts of interest, favouritism, etc. Thus we involuntarily foster people's isolation from the institutions of state power, which are formed in the processes of political participation. As it is, one of the lowest societal involvement in political parties is observed in Latvia. If part of society is separated from association in political parties, on the basis of the argument that it could be detrimental to any institution of state power because a semblance of "neutrality" is important, we continue suggesting that association in parties is something unwelcome, with bad "aftertaste", damaging to a person's professional growth. We get a seemingly pretty picture, but it is only a semblance.

I agree that political discussions and canvassing have no place in the activities of armed forces. It is incompatible with military discipline, the principles of commander, undivided authority and chain of command. It hinders efficient and professional performance of service. However, this is a matter that should be separated from membership in a political party. It must be underscored that also persons who are not officially members of a political party could engage in such canvassing and discussions. Thus, the prohibition to associate does not directly prohibit these. At the same time, these are already prevented by the prohibition of active political activities and the duty of loyalty to the democratic state order. In particular, these are prevented by the duty of comradeship and discipline, which follow from the soldier's oath. Comradeship means both a tolerant attitude toward another soldier's worldview and the provision of all possible help to another soldier, without any kind of prejudice. Military discipline, in turn, means both self-discipline and external discipline. In the context of political association, both these duties should be understood as prohibition to use political considerations in a soldier's activities, to be moderate and comply with comradeship among soldiers. Violation of these duties, included in the oath, entails disciplinary punishment. It means that there already are less restrictive measures that allow safeguarding military discipline and equality, without interfering with a person's individual and political life.

My observations in military service allow me to conclude that soldiers national guards, even being politically active, in military service separate their political opinion from the performance of service tasks, are self-disciplined in this regard, abiding by the oath. The perception that a soldier's political association would damage the reputation of the National Armed Forces is erroneous because already now the National Guard and reserve forces constitute the significantly larger, more active and visible part of the National Armed Forces. Thus, the perception of the impact of the freedom to association on "political neutrality" is based upon rhetoric, not upon objective facts. And, as I mentioned above, this rhetoric, actually, is very damaging for a democratic state where institutions of state power are formed politically through the mediation of political parties. It is particularly detrimental for our State that professional growth is linked to participation in or abstention from association in a political party, that professional performance and its objective assessment is constantly questioned, linking it to participation in or abstention from association in a political party. There is legal regulation in Latvia for preventing conflicts of interest, preventing favouritism in professional growth, which is not based on objective criteria.

Likewise, surrendering to Russia's propaganda is damaging to Latvia. One of the arguments provided in the judgement is the potential impact on the army of political parties that are supporting Russia. However, by this, Russia's claims regarding its power and ability to impact all functions of another state are being legitimised. Latvia as a democratic state governed by the rule of law is sufficiently strong to prevent such threats through the mechanism referred to above, rather than fostering their popularity and, accordingly, fear and schism in society.

Finally, I agree that the reputation of the body of state power, trust in the state power are threatened by various factors or risks. Prohibition is the simplest type of risk management. However, let us ask ourselves whether prohibition is effective in this situation. In my opinion, this risk could be managed by other means – military discipline, self-discipline, prohibition of active political canvassing in the National Armed Forces, reinforcing the importance of and the need for political parties in a democratic state.

Judge

J. Neimanis