



# **JUDGE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA**

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## **SEPARATE OPINION**

**of Jautrīte Briede,**

**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 ”**

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

2. I uphold the conclusion made in the Judgement that the contested provisions, which prohibit a soldier from being a member of a political party, comply with Article 102 of the Constitution. However, I am of the opinion that the Constitutional Court had to continue reviewing the compatibility of the contested provisions with the first sentence of Article 91 of the Constitution.

The Constitutional Court concluded that the groups of persons, identified in the application, with respect to membership in a political party, were not comparable in terms of the principle of legal equality, therefore the contested

provisions, which prohibit a soldier from being a member of a political party, comply with the first sentence of Article 91 of the Constitution. However, if the Constitutional Court had concluded that the contested provisions violated the principle of legal equality then, in compliance with what it did in its judgement of 21 April 2022 in case No. 2021-27-01, it would have to recognise these provisions as being incompatible with the first sentence of Article 91 of the Constitution and, thus – void. I hold that such action by the Constitutional Court would be wrong.

3. In its Judgement, Constitutional Court recognised that the restriction on fundamental rights, established in the contested provisions, was suitable for reaching the legitimate aim – protection of democratic state order and public security. The Court recognised that there were no more lenient measures that would allow reaching the legitimate aims of the restriction on fundamental rights in at least the same quality. It also recognised that the benefit that society gained from the requirement of political neutrality set for a soldier outweighed the adverse consequences caused for a soldier by the prohibition to be a member of a political party. Thus, essentially, the Constitutional Court admitted that the restriction on fundamental rights, established in the contested provisions, was necessary in a democratic society.

If the Constitutional Court were to recognise that the contested provisions violated the principle of legal equality it would have to recognise as being void such legal provisions that *per se* substantially comply with the Constitution. At least this is how the Constitutional Court has acted previously, e.g., in its judgement of 21 April 2002 in Case No. 2021-27-01.

If the Constitutional Court reviews the compliance of a restriction on fundamental rights both with another article of the Constitution and the first sentence of Article 91 and recognises the restriction on fundamental rights as being necessary in a democratic society then it, in conjunction with Article 91 of the Constitution, substantially reviews not the provision that has been contested in the case but the regulation, included in other legal provisions, pursuant to which restriction has not been established with respect to another comparable group. In fact, the compliance of the absence of certain regulation with the first sentence of Article 91 of the Constitution is being assessed. I am of the opinion that this exceeds the limits of the present case.

Due to this, I hold that it would be wrong to recognise as void the provisions that are contested in the case. Otherwise, even if the legislator, after such

judgement by the Constitutional Court, would establish a restriction on the fundamental rights for another comparable group, it would not change the outcome of the Constitutional Court's judgement with respect to the contested provisions – at a certain moment, they would become void in any case.

Moreover, by such a judgement, the Constitutional Court would limit the legislator's discretion to decide for which comparable groups a restriction on fundamental rights should be established and, substantially, would impose the obligation to establish a restriction on fundamental rights for such group of persons, to which the contested provisions do not apply at all.

4. In view of the above, I hold that if the Constitutional Court recognises the restriction on fundamental rights, established in the contested provision, as being necessary in a democratic society then it must continue reviewing the compatibility of the contested provisions with the first sentence of Article 91 of the Constitution, stating that such reviewing cannot change the outcome of the Judgement.

The Court of Justice of the European Union also has acted similarly, e.g. in a case where an Italian court had referred a question regarding Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, in which the principles of equality and non-discrimination are enshrined. In this case, the Court of Justice of the European Union has recognised that legal provisions should be interpreted to mean that the State may grant the rights of accreditation to a single national body, and therefore the Court noted that due to this reason “Articles 20 and 21 of the Charter cannot be usefully relied on”, the said Articles of the Charter cannot affect the validity of the contested provisions (*see Judgement by the Court of Justice of the European Union of 6 May 2021 in Case C-142/20 "Analisi G. Caracciolo", Para 62–63*).

At the same time, the Constitutional Court has the *obiter dictum* possibility to draw the legislator's attention to the fact that, possibly, other comparable groups exist, thus allowing the legislator to make its own considerations, whether respective restriction on fundamental rights should not be established for these groups.

Judge of the Constitutional Court

Jautrīte Briede

*The document has been signed with a secure electronic signature.*