



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT

in the name of the Republic of Latvia  
in Riga, on 29 June 2018  
in case no. 2017-25-01

The Constitutional Court of the Republic of Latvia in the following composition: the chairperson of the hearing of the Court Ineta Ziemele, judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

having regard to the constitutional complaint submitted by Tatjana Ždanoka,

on the basis of Article 85 of the *Satversme* [Constitution] of the Republic of Latvia and Article 16(1), Article 17(1)(11), Article 19<sup>2</sup> and Article 28<sup>1</sup> of the Constitutional Court Law,

at a court hearing on 31 May 2018 examined in written proceedings the case

**“On the compliance of Article 5(6) of the *Saeima* Election Law with Articles 1, 9 and 91 of the *Satversme* of the Republic of Latvia”.**

### The Facts

1. On 25 May 1995 the *Saeima* [the Parliament] adopted the *Saeima* Election Law, which entered into force on 7 June 1995.

Article 5(6) of the law provides that persons who after 13 January 1991 had been active in the Communist Party of the Soviet Union (the Communist Party of Latvia), Working People’s International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees are not to be included

in the lists of candidates for elections of the *Saeima* and are not eligible to be elected to the *Saeima* (hereinafter – the contested norm).

**2.** On 30 August 2000 the Constitutional Court delivered a judgment in the case no. 2000-03-01 “On the compliance of Article 5(5) and (6) of the *Saeima* Election Law and Article 9(5) and (6) of the Law on Elections of City Councils and Municipality Councils with Articles 89 and 101 of the *Satversme* of the Republic of Latvia, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 25 of the International Covenant on Civil and Political Rights” (hereinafter – case no. 2000-03-01), by which it recognised the contested norm as being compatible with the legal norms of higher legal force.

On 15 June 2006, the Constitutional Court delivered a judgment in the case no. 2005-13-0106 “On the compliance of Article 5(5) and (6) of the *Saeima* Election Law and Article 9(1)(5) and (6) of the Law on Elections of City Councils, Country Councils and Municipality Councils with Articles 1, 9, 91 and 101 of the *Satversme* of the Republic of Latvia, as well as with Articles 25 and 26 of the International Covenant on Civil and Political Rights” (hereinafter – case no. 2005-13-0106), by which it recognised the contested norm as being compatible with the legal norms of higher legal force.

**3. The applicant – Tatjana Ždanoka** (hereinafter – the Applicant) – considers that the contested norm is incompatible with Articles 1, 9 and 91 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*).

**3.1.** It is noted in the application that until August 1991 the Applicant had been the member of the Control and Audit Commission of the Communist Party of Latvia (hereinafter – the CPL). On the basis of a request made by the prosecutors’ office the court has established the fact that the Applicant had been active in the CPL after 13 January 1991. Due to this, pursuant to the contested norm the Applicant cannot apply to become a candidate for elections of the *Saeima*. Thus, she has been denied the right to be elected which is protected by the *Satversme*.

**3.2.** According to the applicant, the Constitutional Court in its judgment of 30 August 2000 in the case no. 2000-03-01 and in the judgment of 15 June 2006 in the case no. 2005-13-0106 had found that the legislator should regularly

review the need to restrict the passive electoral rights. Likewise, the European Court of Human Rights had pointed to this in its judgment of 16 March 2006 in the case “*Ždanoka v. Latvia*”.

Although Latvia’s political and economic situation has changed since 2006 the legislator has not reviewed the necessity for the restriction on electoral rights included in the contested norm.

It is alleged that the restriction included in the contested norm due to its general and out-dated nature no longer complies with the prohibition of arbitrariness and the principle that a decision of the state needs to be substantiated that follow from Article 1 of the *Satversme*. Moreover, the legislator has not reviewed the need for this restriction. Hence, the restriction on electoral rights included in the contested norm had not been established by law. With Latvia’s full integration in the European Union and the accession to the Organisation for Economic Co-operation and Development the conditions, allegedly, have significantly changed. Therefore it should be recognised that the restriction on fundamental rights no longer has a legitimate aim.

Even assuming that the restriction on fundamental rights included in the contested norm had a legitimate aim, it could be achieved by other measures which would be less restrictive on a person’s rights. By envisaging that with respect to a person who has proposed her candidacy for the *Saeima* election an additional informative note should be placed in the official journal “*Latvijas Vēstnesis*” regarding her membership in the CPL. The benefit that the society gains by restricting the Applicant’s fundamental rights established in the *Satversme* is said to not outweigh the damage inflicted upon her rights and lawful interests. Also, it should be taken into account that the Applicant’s fundamental rights have been restricted for a prolonged period of time. Moreover, notwithstanding the fact that the Applicant had been active in the CPL, the voters had entrusted her to represent their interests at the European Parliament. Thus, the principle of proportionality had not been complied with and the contested norm is incompatible with Articles 1 and 9 of the *Satversme*.

The restriction on rights established by the contested norm – the prohibition to stand for the *Saeima* elections – is said to violate also the principle of legal equality. Persons who have been members of the CPL and other citizens of Latvia are said to be in equal and comparable circumstances. Therefore all these persons should have the possibility to propose their candidacy for the *Saeima* elections. It is contended that the differential treatment of these groups of persons

lacks objective and reasonable grounds. Hence, the contested norm is said to be incompatible also with Article 91 of the *Satversme*.

**3.3.** Upon having acquainted herself with the materials in the case file, the Applicant noted that she does not agree to the opinions expressed by a number of summoned persons in the case; however, she has not provided any new substantive arguments regarding the incompatibility of the contested norm with Articles 1, 9, and 91 of the *Satversme*.

**4. The institution which has adopted the contested act, – the Saeima –** notes in its written reply that the contested norm complies with Articles 1, 9, and 91 of the *Satversme*.

**4.1.** It is maintained that, essentially, the Applicant requests an assessment of the compliance of the contested norm with the *Satversme* insofar it prohibits persons who after 13 January 1991 had been active in the CPSU (CPL) from standing for the *Saeima* elections. The restriction on the passive electoral right included in the contested norm is said to be proportionate also with respect to persons, who had been active in other organisations referred to in it – the Working People’s International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees, since these organisations, similarly to the CPL, had purposefully acted to disrupt the course of independence and democracy in Latvia and to restore the totalitarian occupational power.

A person’s right to be elected is included in both Article 9 and Article 101 of the *Satversme* and they are inseparably linked to the principle of democracy included in Article 1 of the *Satversme*. The restrictions on the electoral rights affect simultaneously both the persons’ subjective rights established in Articles 9, 91 and 101 of the *Satversme* and also the principle of a democratic state derived from Article 1 of the *Satversme*. Therefore the examination should address the compliance of the restriction included in the contested norm with Articles 1, 9 and 91 of the *Satversme* jointly.

**4.2.** The contested norm restricts the right to stand for the parliamentary elections. The right to vote and to be elected are, first and foremost, a person’s political rights. The purpose of political rights is to ensure to a person the possibility to participate in the governance of a democratic state and, by his vote or active participation, to influence the political processes in the state.

Pursuant to the case-law of the European Court of Human Rights, the right to vote at parliamentary elections and the right to stand for parliamentary elections may be restricted. States enjoy broad discretion in setting criteria within their constitutional systems with respect to the status of members of the parliament, *inter alia*, also in setting criteria due to incompatibility with which persons may not be elected. These criteria may differ in different states, depending on the historical and political circumstances of each particular state. Moreover, stricter requirements may be set for exercising the passive electoral right compared to the active electoral right, i.e., the right to vote. The discretion granted to the state is restricted by the obligation to comply with the basic principle of Article 3 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) – “the free expression of the opinion of the people in the choice of the legislature”.

**4.3.** The contested norm prohibits the persons whose active involvement in the organisations referred to in the contested norm after 13 January 1991 had been established by a court judgment to stand for the *Saeima* elections. Whereas those citizens of Latvia to whom neither this nor other restrictions on the electoral rights established in the *Satversme* or the *Saeima* Election Law apply have not been deprived of this right. Hence, the contested norm envisages a differential treatment of these groups of persons.

However, this differential treatment and also the restriction on the passive electoral right has been established by a law that has been adopted and promulgated in due procedure.

To substantiate the compliance of the contested norm with the *Satversme* in 2000 and 2005, the *Saeima* had noted that the restriction had a number of legitimate aims – protection of the democratic state order, national security and the territorial unity. It is contended that also now the restriction on the passive electoral right has a legitimate aim – protection of the democratic state order. However, at present the ethical dimension of this aim is said to be of a special significance. The democratic state order must be protected against persons who are not ethically qualified to be representatives of a democratic state and who, by their actions, have proven that they have not been loyal to the democratic state order.

The restriction established in the contested norm is said to be appropriate for reaching the legitimate aim, since it ensures that persons who have acted against not only the national independence of Latvia but also against the very notion of democracy cannot be elected to the *Saeima*. This fosters the public trust in the parliament and the people's representatives elected to it, as well as the society's conviction that members of the parliament represent, defend and reinforce the vision of Latvia as a democratic national state governed by the rule of law which is based upon human dignity and liberty.

It is alleged that no alternative measures exist that would be less restrictive on a person's fundamental rights but would allow reaching the legitimate aim in equal quality. Furthermore, the publication of information about the candidate in the official journal "Latvijas Vēstnesis" with an informative note regarding the involvement of the respective person in one of the organisations referred to in the contested norm cannot be regarded as an alternative measure in the current political circumstances. The Constitutional Court had mentioned this measure as a possible alternative when examining the situation of a particular applicant to the Constitutional Court. Moreover, this indication by the Court has been directed to such cases where the person in question by his actions had proven a positive attitude towards the state of Latvia. Although an assumption exists in a democratic society that a voter who has access to comprehensive and transparent information about the candidate proposed for election can make his own choice, this assumption does not exclude the state's right to impose certain restrictions on standing for the *Saeima* elections.

Latvia as a democratic state has become fully integrated into the European Union and the NATO and is also a member of the Council of Europe and the Organisation for Economic Co-operation and Development. However, the fact that the process of reconciliation of the Latvian society with respect to those persons who were involved in maintaining the occupational regime has not yet concluded is said to be of an equal importance.

**4.4.** The restriction included in the contested norm is a long-term one. However, this is not *per se* incompatible with the *Satversme* and the Convention. In view of the special nature of political rights, long-term restrictions on electoral rights for persons who have posed serious threats to the rule of law and the foundations of a democratic society are said to be permissible.

The legislator has nevertheless reviewed the necessity for the contested norm several times but had not found that the restriction established by the

contested norm no longer had a legitimate aim, that the threat to the public interests protected by the norm had diminished over time and that therefore this restriction should be revoked.

In examining the proportionality of the restriction, the fact that a person's active involvement in the organisations referred to in the contested norm has been established by a judgment of a court which can be appealed in three levels of courts is said to be essential. Thus, the establishment of the circumstances defined in the contested norm is not arbitrary. Moreover, the contested norm does not limit the political activities of those persons who after 13 January 1991 had been active in the organisations referred to in the contested norm, since it does not deny these persons the possibility to be active in political parties, public organisations, and even be employed in various state institutions. Hence, these persons have not been deprived of the essence of the right to participate in the governance of the state.

**5. The summoned person – the Ministry of Justice** – considers that the contested norm complies with Articles 1, 9 and 91 of the *Satversme*.

**5.1.** A person who by her previous actions has turned against the fundamental principles of a democratic state has been validly denied the right to be elected to the *Saeima*. Although currently the national security is no longer under threat, also the moral and ethical aspects should be taken into consideration.

For a long time reforms had been implemented in the state to ensure the transition from the Soviet regime to the form and model of a democratic state governance; i.e., the reform of property was implemented, by returning the nationalised properties to their former owners or their heirs; the matters related to persons' legal status are being resolved; as well as the issues of the official language and other issues of national nature. However, these reforms have not been fully completed yet. For example, the law "On the Status of the Participant of World War II" entered into force only on 1 February 2018. Moreover, lately the issue of publicly disclosing the persons who had been active in the Committee for State Security has gained relevance. Likewise, the committee established by the Order of the Cabinet of Ministers of 7 November 2013 no. 537 "On Establishing a Committee for Determining the Number of Victims of the Totalitarian Communistic Regime of the USSR and the Sites of Mass Graves, Collecting Information on Repressions and Mass Deportations, and for

Calculating the Damages Inflicted on the State of Latvia and its Inhabitants” has not completed its work yet.

By developing legal regulation and by taking active steps the state is trying to redress the historical injustice and to provide support to the victims of repressions. It is essential that the members of the *Saeima* continue the processes that have been initiated. The Ministry of Justice considers that a significant part of the society would find it unacceptable if a person who had been active in the CPSU (CPL), had supported partial or full restoration of the occupational regime could become a member of the parliament. Likewise, the foreign policy situation in the region cannot be deemed to be stable. The fact that Latvia has joined international organisations that could help to maintain military security does not mean that the state itself should not do everything possible to protect its democracy.

**5.2.** The legislator has on several occasions reviewed the necessity for the restriction included in the contested norm and has found that it still has a legitimate aim. There are no other measures that would be less restrictive on a person’s fundamental rights but would allow reaching the legitimate aim in equal quality. The fact that the voters, by an informative note, would be informed about a person’s collaboration with one of the organisations referred to in the contested norm would not ensure the protection of the democratic state order. Likewise, it is impossible to set a definite date until which the restriction should be maintained, since the situation in the region is very volatile.

The restriction on the passive electoral right included in the contested norm is said to be aimed at the protection of the democratic state order rather than at limiting the diversity of political ideas. It is maintained that the restriction continues to have a legitimate aim, that the restriction is proportionate to its legitimate aim, and that the principle of equality has not been violated either. Hence, the contested norm is said to comply with Articles 1, 9, and 91 of the *Satversme*.

**6. The summoned person – the Ombudsman** – considers that the contested norm complies with Articles 1, 9, and 91 of the *Satversme*.

**6.1.** The restriction on a person’s rights included in the contested norm due to which she cannot be elected to the *Saeima* has been established by law and is justified by a legitimate aim. Already in 2000 and 2005 the legislator had indicated that the respective restriction serves such legitimate aims as the

protection of the democratic state order, national security and territorial unity. Also now the restriction has a legitimate aim – the protection of the democratic state order.

The protection of the democratic state order as one of the values has been included also in the preamble to the *Satversme*. A democratic state may and it has the obligation to use all legal measures at its disposal to protect itself against an aggressive minority which is trying to annihilate it, as well as against anti-constitutional ideas. In a democratic state which is endangered it is permissible that anti-state organisations are prohibited and the electoral rights of their members are restricted, if the principles of legality and proportionality are complied with. It is contended that the contested norm ensures that those persons who by their activities had attempted to turn against the democratic state order cannot stand for the *Saeima* elections and cannot be elected to the *Saeima*.

It should be also taken into account that the State enjoys broad discretion in determining the criteria with respect to a person's right to stand for elections. Moreover, in different states these criteria may differ, depending on the political and historical situation of each particular state. Latvia's historical experience is said to be unique; therefore, in assessing the proportionality of the particular restriction, the long-term impact of the past events on society is said to be of particular importance.

Until 2010 the legislator had on several occasions reviewed the necessity for the restriction included in the contested norm. Although the fact that the restriction has not been reviewed after 2010 should be seen negatively, this fact in itself does not mean that the social significance of the restriction and the need to maintain it has vanished. If the state is able to prove that the restriction included in the contested norm continues to be appropriate for reaching the legitimate aim then it is said to be proportionate.

**6.2.** The groups of persons indicated by the Applicant are not in similar circumstances that are comparable according to certain criteria. It is contended that the contested norm, rather than envisaging differential treatment of persons depending on their political conviction, establishes a restriction on the passive electoral right for all those persons who after 13 January 1991 had been active in the CPSU (CPL). Therefore the contested norm is said to comply also with Article 91 of the *Satversme*.

**7. The summoned person – the Constitution Protection Bureau** – considers that the contested norm complies with Articles 1, 9, and 91 of the *Satversme*.

**7.1.** The restriction on the passive electoral right established in the contested norm applies to those persons who have taken actions against the national independence of Latvia and had attempted to restore the previous regime. The Supreme Council of the Republic of Latvia (hereinafter – the Supreme Council) by the decision of 23 August 1991 “On the Anti-constitutional Activity of the Communist Party of Latvia” has recognised the activities of the CPL as anti-constitutional and found that the CPL was responsible for the genocide against the people of Latvia implemented under its leadership.

Initially, the restriction on the electoral right established in the contested norm had been adopted to protect the democratic state order. In other words, the contested norm is aimed at those persons who had taken actions to undermine the democratic state order. The Constitution Protection Bureau notes, by referring to the case-law of the European Court of Human Rights, that such restrictions on electoral rights are permissible. The state enjoys broad discretion to envisage in its constitutional system rules with regard to the status of the members of the parliament and, *inter alia*, to define criteria, due to incompatibility with which persons may not be elected to the parliament.

The reconciliation process in the Latvian society with respect to persons involved in maintaining the occupational regime has not yet concluded. Therefore the restriction on fundamental rights continues to have a legitimate aim and this restriction is said to be proportionate. The threats to the public interests have not diminished, therefore there are no grounds for revoking this restriction.

**7.2.** The Constitution Protection Bureau, by referring to the findings made in its annual report of 2014, points out the existing threats to the national security, which, *inter alia*, follow from the measures of influence and propaganda implemented by Russia. Working with the compatriots living abroad is said to be one of the mechanisms employed for reaching Russia’s foreign policy aims, and it is being actively used also in Latvia. The purpose of the respective measures is to increase, to the extent possible, Russia’s geopolitical influence in the region, simultaneously weakening the NATO and the European Union, as well as the position of the Baltic States in these organisations. The involvement of persons who are closely linked to the policy implemented by Russia in the governance of

a democratic state could jeopardise the national security and the democratic state order.

**8. The summoned person – the Security Police** – considers that the contested norm complies with Articles 1, 9, and 91 of the *Satversme*.

**8.1.** The restriction on the passive electoral right established by the contested norm should be maintained because it is essential for the protection of the democratic state order. The risk that a person who previously had been active in any organisation referred to in the contested norm, in performing the functions of a member of the *Saeima*, could deliberately act contrary to the interests of the state, resist the policy that the state implements in certain areas, as well as influence the process of decision-taking in the interests of another state should be taken into account. Likewise, while being active in the *Saeima*, such a person could facilitate and support the activities conducted by the intelligence services of another state by providing to them significant information, which, although it is not classified as official secrets, could have a negative impact on the national interests.

**8.2.** The Security Police had repeatedly noted in its annual reports that the persons who previously had been active in the organisations referred to in the contested norm were expressing opinions and acting contrary to the national security and interests. This is said to prove that these persons have not changed their views over a prolonged period of time and continue to imperil the democratic state order by their actions. The Applicant is one of those persons whose activities had been assessed by the Security Police. Restrictions similar to the one included in the contested norm have not been set with respect to the elections of the European Parliament, and due to this these persons frequently use the possibility to act, in the capacity of a member of the European Parliament, contrary to the interests of Latvia. For instance, the Applicant – a member of the European Parliament elected from Latvia – by her actions had expressed strong support for the annexation of Ukraine, implemented by Russia, which is totally contrary to the interests of Latvia.

With Russia's aggression in Ukraine, the geopolitical situation has deteriorated, and this is said to influence directly the risks of a threat to Latvia's national security. The Security Police considers that the restriction included in the contested norm continues to be necessary and also is proportional.

**9. The summoned person – Representative of Latvia before International Human Rights Institutions** *Kristīne Līce* – points to the case-law of the European Court of Human Rights, which might be relevant for the assessment of the compliance of the contested norm with Articles 1, 9, and 91 of the *Satversme*.

**9.1.** Article 3 of the First Protocol to the Convention imposes the obligation on the states “to hold free elections at reasonable intervals by secret ballot”, thus ensuring free expression of the people’s will. A person’s rights to vote and to stand for elections also follow from the aforementioned norm of the Convention. However, a person’s rights with respect to elections are not absolute and may be restricted. Moreover, states enjoy broad discretion in justifying the need for such restrictions.

In those matters where there is no European or at least regional consensus, a state’s discretion to decide on restrictions is closely linked to an appropriate justification for the necessity of the restriction. This justification can take very diverse forms – an annotation to a legal act, parliamentary debates, research, and court rulings. However, the justification should include both explanations regarding the historical, political and legal context of the respective restriction and the unsuitability of narrower restrictions for reaching the legitimate aim, and also on what has been done to ensure a uniform application of the restrictions.

In addition to the obligation to provide justification for the restriction in the context of the country’s special situation, the state also has the obligation to verify, after a certain period of time, whether with the changes in the respective situation the justification of the restriction continues to be valid. It follows from the case-law of the European Court of Human Rights that no specific time-limit (e.g., once every ten years or before each election) has been set for a state for reviewing the restriction on electoral rights, nor an obligation to revoke the previously set restrictions has been defined. However, in deciding on maintaining the restriction, the State has the obligation to ensure that substantive discussion has taken place during the process of adopting the respective decision, assessing not only whether the justification that was initially provided for establishing the restriction justifies maintaining it in the future but also what the situation in the country is, how it develops and how it has changed, and also to ensure that the general situation in the region is examined.

**9.2.** The restriction on the passive electoral right included in the contested norm is said to be closely linked to a person's activities in a particular political organisation, i.e., to the exercise of the freedom of association.

The fact that political organisations that turn against the state order cause a risk of violence or disorder in the state are dissolved or are not registered may lead to the restriction on the passive electoral rights for all members of the respective party or organisation. It follows from the case-law of the European Court of Human Rights that a party the leaders of which call for violence or promote policy that aims to undermine democracy and do not respect democratic rights and freedoms, cannot claim the protection guaranteed by the Convention. A decision to dissolve a party that has already been registered or to block its events, by prohibiting its leaders to engage in political activities for a certain period of time, can be taken only in the most serious cases. Moreover, the prohibition to stand for elections applied to each person (each member of the party) should be individualised. With respect to an individual assessment the European Court of Human Rights also takes into consideration whether evidence can be discerned of such changes in a person's conviction or conduct that could be of importance in examining the validity of the restriction. In the case-law of the European Court of Human Rights even a prolonged or permanent restriction on rights has not been found to be a violation of the Convention if it had been applied to persons convicted for serious crimes committed during the period of World War II.

**9.3.** The judgment of 30 April 2013 by the Department of Administrative Cases of the Supreme Court Senate in case no. SKA-172/2013 could be of importance in examining the proportionality of the restriction included in the contested norm. In the aforementioned case the court has pointed to the legislator's unambiguous treatment of the Communist and Nazi ideologies and the crimes committed by the totalitarian regimes created on the basis of these ideologies. Both these ideologies together with the totalitarian regimes created by them and the implemented political repressions are to be recognised as being criminal.

**10. The summoned person – *prof. Dr. h. c., Assessor. jur., Dipl.-Pol. Egils Levits*** – notes that he already has expressed his opinion on the proportionality of the restriction included in the contested norm in his dissenting

opinion added to the judgment of 17 June 2004 of the European Court of Human Rights in the case “*Ždanoka v. Latvia*”.

**10.1.** In assessing the compliance of the contested norms with norms of the *Satversme* it is important to apply the concept of militant democracy. Its aim is to protect democracy against its enemies; i.e., against political forces and persons who aim to abolish democracy.

The concept of militant democracy as a specific objective of the Latvian people has been included in the preamble to the *Satversme* which provides that the people of Latvia defend their sovereignty, the independence of the state of Latvia, its territory, the unity thereof, and the democratic state order. A democratic state order is said to be characterised by four overarching principles, i.e.: democracy, a state governed by the rule of law, a socially responsible state, and a nation state. Hence, the concept of militant democracy defends the foundations of the state. In view of Latvia’s historical and the current political and geopolitical context, it should be recognised that, in Latvia, the concept of militant democracy comprises not only the democratic state order but also the state itself, its existence.

The concept of militant democracy is the legitimate aim of such measures that the state takes to protect its democratic order. This concept legitimizes the state also in taking such measures that are aimed against a minority or certain groups or persons who wish, by participating in the democratic process, to undermine the foundations of the state – its democratic order or the state itself. In taking such measures, a person’s fundamental rights may be restricted; however, the respective restrictions should serve a legitimate aim and should be proportionate to this legitimate aim.

**10.2.** The contested norm restricts also the right to be elected of those persons who by taking actions after 13 January 1991, in the conditions of the presence of occupation army, attempted to restore the previous regime. These persons simultaneously turned against the state of Latvia and also against its democratic order. Hence, these persons have proven their hostile attitude towards the democratic Latvia.

The aim of the restriction on the passive electoral right included in the contested norm is formed by a number of closely interlinked elements. Namely, the contested norm precludes the aforementioned persons from using the possibility, granted by democracy, to participate in elections and to become elected in order to attempt to undermine the state and democracy later. Likewise,

the contested norm precludes the possibility that the participation of these persons in elections and the probability that they could be elected would morally discredit the democracy in Latvia. These persons have proven by their actions that they do not meet the minimum moral standards of democracy. Moreover, since these persons have already proven their disloyalty to the state of Latvia and democracy, the society cannot be convinced that these persons, as elected public officials, could be relied upon and that in a possible future critical situation or in a crisis they would take an unflinching stand for the foundations of the Latvian state. In addition, the restriction included in the contested norm is said to be also a political penalty for turning against the state of Latvia and democracy. It is public condemnation, in the form of a law, which is necessary also to clearly confirm that the society of Latvia as a political community is not neutral, that it takes a stand for its state and democracy, and, by this it reinforces the public awareness of statehood and democracy. All these elements taken together and also each of them separately is the legitimate aim of the restriction on fundamental rights within the meaning of the concept of militant democracy.

The restriction included in the contested norm is said to be appropriate for reaching the legitimate aim. There are no other measures that would be less restrictive on a person's fundamental rights but would allow reaching the legitimate aim in at least an equal quality. There is no reason to consider that the objective circumstances, the values of society and perception have changed to the extent that the contested norm had become meaningless. Likewise, it is not correct to consider that the need for the restriction had lost its relevance over time. With the consolidation of loyal and democratic worldview in the society activities against the state of Latvia and democracy become even more unacceptable and condemnable than before. It is exactly a solid and mature democracy that even more than immature democracy, still unsure in its judgments, is ready to condemn such disloyalty towards the state and the democratic state order. Also, it should be taken into consideration that the awareness of the statehood and democracy in the Latvian society has not yet become sufficiently consolidated. Repelling of the restriction included in the contested norm rather than reinforcing the state and democracy would weaken them.

Moreover, the legislator has repeatedly reviewed the need for the restriction included in the contested norm; however, reviewing does not impose an obligation on the state to reach a particular result after a certain period of time.

**10.3.** The restriction on the passive electoral right established by the contested norm has been set for life for those persons who have turned against the state of Latvia and its democratic order. Moreover, no mechanism for individual case-by-case assessment has been envisaged. By applying the findings expressed in the judgment of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, the proportionality of the restriction established in the contested norm with respect to a specific person may be assessed.

**11. The summoned person – *Dr. iur. Aivars Endziņš*** – indicates that he has not altered his view expressed in the dissenting opinion appended to the judgment in case no. 2000-03-01 regarding the compliance of the contested norm with the *Satversme*.

**11.1.** The compliance of the contested norm with the *Satversme* has been examined in already two judgments of the Constitutional Court. Both in its judgment in case no. 2000-03-01 and in its judgment in case no. 2005-13-0106 the Constitutional Court has recognised the contested norm as being compatible with the provisions of the *Satversme* and the Convention. However, the Constitutional Court has also indicated that the restriction on the passive electoral right may exist only for a certain period of time, therefore the legislator should, as soon as possible, review the necessity for the respective restriction. The European Court of Human Rights in its judgment of 16 March 2006 in the case “*Ždanoka v. Latvia*” also underscored that the Latvian Parliament should constantly review the restriction included in the contested norm so that it could be revoked soon.

In view of the fact that following Latvia’s full integration into the European Union the situation in the country has become much more stable, in the framework of the case under review the fact whether the legislator has fulfilled this obligation is of particular importance.

**11.2.** On 26 April 2007, the *Saeima*, when examining in the second reading the draft law no. 220/Lp9 “Amendments to the *Saeima* Election Law”, dismissed the proposal made by the member of the *Saeima* V. Buzajevs to strike the contested norm from the law. Also on 29 January 2009, when examining in the second reading the draft law no. 566/Lp9 “Amendments to the *Saeima* Election Law”, the *Saeima* dismissed the proposal made by the member of the *Saeima* S. Agešins to strike the contested norm from the law. Likewise, on 25 February 2010, when examining in the second reading the draft law no. 1215/Lp9

“Amendments to the *Saeima* Election Law”, the *Saeima* dismissed the proposal made by the faction “For Human Rights in United Latvia” to strike the contested norm from the law. Hence, the legislator has allegedly not fulfilled its obligation to review the necessity of the contested norm.

A. Endziņš underscores that, despite the complicated political circumstances, Latvia already since its origins has developed as a manifestly democratic state which respects a person’s fundamental rights and guarantees the general electoral rights. There are no grounds to consider that in the current circumstances the restriction on the passive electoral rights included in the contested norm would have a legitimate aim and that this restriction would be necessary.

**12. The summoned person –Associate Professor of the Faculty of Social Sciences, the University of Latvia, *Dr. sc. pol.* Ivars Ījabs** – notes that the contested norm is a tool of “militant democracy” which the democratic regime uses against the growing impact on the political process by hostile, anti-democratic forces.

**12.1.** As extensive as possible involvement of citizens in the democratic process is said to be an important criterion of democracy. Therefore any restriction on the active and passive electoral rights should be justified and well-considered, and a preference should be given to defining a more extensive rather than narrow circle of voters and candidates for election. However, not all principles that characterise a full-fledged democracy are applicable also to the formation of such a regime. With the aim of ensuring the sustainability of democracy in the period of transition from an authoritarian regime to a democratic regime, the operation of these principles may be restricted. One of the tools for ensuring “the fairness of the transition” is a restriction on a person’s political rights, namely, a prohibition to occupy certain positions – both political positions, to which a person is elected, and non-elected administrative positions. All post-communist states of Central Europe, including the Baltic States, have established such or similar restrictions for the officials of the Communist regime.

**12.2.** An opinion that time is far from being the only or the most significant factor that stabilises democratic regimes is accepted in the contemporary political science. Likewise, a state’s membership in organisations of democratic states does not guarantee *per se* the stability of the state’s democratic regime. Therefore, Latvia’s integration in the European Union could be regarded as an

important indirect proof of the stability of Latvia's democracy; however, it does not prove it directly at all.

Several authoritative indices of democracy research, following the analysis of various indicators, have recognised Latvia as being a functioning democracy. The research organisation "Freedom House" which conducts annual monitoring of democracy and human rights on global scale has recognised Latvia as being a free country and has awarded to Latvia, as regards civic and political rights, 87 points out of 100 points possible. Whereas the Bertelsmann Transformation Index which assess transitional societies, by granting 8.75 points out of 10 points possible, has characterised Latvia as "democracy in the process of consolidation". Similarly, the democracy index developed by *Economist Intelligence Unit* characterises Latvia as a "flawed democracy".

Although researchers of democracy in principle agree that Latvia is a full-fledged democratic state, the degree of democratisation and the political culture of the Latvian society itself is important – its attitude towards democracy and the prevalence of democratic values. In this respect, Latvia's democracy cannot be regarded as being totally stable. In a significant part of Latvia's society nostalgic feelings towards the authoritarian Soviet regime can be observed. For example, the data of the Social Memory Research Centre of 2017 show that almost half of Latvia's residents assessed the non-democratic Soviet period in Latvia's history as "very good" or "rather good". Therefore there are no grounds to assume that, during the last fifteen years, Latvia's democracy has become stable enough to give up the restriction established in the contested norm. Moreover, the safest criterion for determining "the sufficient stability" of democracy is said to be the legislator's will. The legislator has repeatedly reviewed the need for the restriction included in the contested norm and each time had concluded that it should be retained.

### **The motives**

**13.** In the case under review the compatibility of the contested norm with legal norms of higher legal force is being examined by the Constitutional Court already for the third time. In the judgment in the case no. 2000-03-01 the Constitutional Court has examined the compliance of the contested norm with Articles 89 and 101 of the *Satversme*, Article 14 of the Convention, and

Article 25 of the International Covenant on Civil and Political Rights, whereas in the judgment in the case no. 2005-13-0106 – its compliance with Articles 1, 9, 91, and 101 of the *Satversme* and Articles 25 and 26 of the International Covenant on Civil and Political Rights.

Pursuant to section 29(1) of the Constitutional Court Law, proceedings in a case may be terminated before the judgment is pronounced if it is established that the claim has been submitted regarding an already adjudicated claim.

In accordance with the case-law of the Constitutional Court, matters of procedural nature must be examined before the constitutionality of legal provisions is reviewed on their merits (*see, for example, the judgment of the Constitutional Court of 19 October 2011 in the case no. 2010-71-01, para. 11, and the judgment of 27 June 2013 in the case no. 2012-22-0103, para. 10*). To decide on the matters of procedural nature, the Constitutional Court will first ascertain the content of the contested norm.

**13.1.** The contested norm provides that persons who after 13 January 1991 have been active in the Communist Party of the Soviet Union (the Communist Party of Latvia), Working People's International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees may not be proposed as the candidates and elected to the *Saeima*.

Since its adoption on 25 May 1995 the contested norm in substance has been in force in its original wording, although minor editorial amendments have been made to it. It follows from the text of the contested norm that the prohibition defined in it for a person to be proposed as a candidate and be elected to the *Saeima* is linked to the activities of the respective person in one the organisations referred to in the contested norm after 13 January 1991.

By the decision of 23 August 1991 of the Supreme Council “On the Anti-constitutional Activity of the Communist Party of Latvia” the activities of the CPL have been recognised as having been anti-constitutional. It is noted in the aforementioned decision that the Central Committee of the CPL has become the centre that consolidates, coordinates and leads the anti-democratic forces and has the aim to destabilise the situation, to disrupt the process of independence and democracy, to overthrow the legal power in Latvia, and to restore totalitarianism. Whereas by the decision of 24 August 1991 of the Supreme Council “On Suspending the Activities of Some Public and Socially-political Organisations”, the activities of the CPL, the Latvian Leninist Communist Youth League, the

Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans as well as the coalition of these organisations – the All-Latvia Salvation Committee – were suspended as being anti-constitutional.

Following the adoption of the Declaration of 4 May 1990 of the Supreme Council "On Restoring the Independence of the Republic of Latvia", those articles of the *Satversme* that determined the constitutionally legal foundations of the state were reinstated. The Constitutional Court has already found that the aim of the activities of the organisations referred to in the contested norm after 13 January 1991, had been undermining the existing state order. Participation in the activities of these organisations was directed against the independence and democracy of the Republic of Latvia. In establishing the meaning of the phrase "to be active" that is included in the contested norm the Constitutional Court has found that it means to participate actively for a longer period of time in the performance of certain actions. The Constitutional Court has also found that a formal membership in the organisations referred to in the contested norm cannot be the reason why a person could not be proposed as a candidate and be elected to the *Saeima*. Thus, in 2000 the Constitutional Court found that the contested norm was directed against those persons who by taking active steps after 13 January 1991, in the conditions of the presence of occupational army, attempted to restore the previous regime (*see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, paras. 4 and 6 of the motives part*).

**13.2.** The Constitutional Court has already recognised that the aim of the contested norm is to protect the democratic state order, national security and the territorial unity of Latvia. The contested norm is targeting persons who have actively attempted to undermine the democratic state order and, thus, have turned against Article 1 of the *Satversme* (*see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 6 of the motives*). The European Court of Human Rights also has found that the purpose of the contested norm was to protect the integrity of the democratic process rather than to punish those who had been active in the organisations referred to in the norm. The legislator had been clearly motivated by prevention rather than by punishment (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case "Ždanoka v. Latvia", application no. 58278/00, para. 122*). Hence, in adopting the contested norm, the legislator's

intention was to deprive persons of the right to be a candidate in elections and to be elected to the *Saeima* not only because the respective persons had been active in the organisations referred to in the contested norm after 13 January 1991 but also because the respective persons, by being active in the said organisations, had imperilled the restored independence and democratic order of the state of Latvia.

The Constitutional Court must establish the content of the contested norm now, in 2018, i.e., it must be examined in the specific moment of time. Hence, the Court must examine whether the content of the contested norm which was put into it at the moment of adoption is still valid, or whether the content of the contested norm should be revealed by analysing the way in which the conditions which should be taken into account in interpreting this legal norm have changed over time. It has been noted in the legal science that over time a legal norm starts leading an increasingly independent life and distances itself from the ideas of its creator. Therefore the aim and the meaning of a legal norm should be construed within the context of constantly changing real life and the development of society (*see: Meļķisis E. Latvijas tiesiskās sistēmas ceļš uz demokrātisku tiesisku valsti. Rakstu krājums. Rīga: Tiesu namu aģentūra, 2014, pp. 191-192, 244*). Not only the text of legal norm as it was at the moment when this norm was adopted but also the life of the legal norm following its adoption must be examined when interpreting a legal norm (*see: Dworkin R. Law's Empire. London: Fontana, 1991, p. 348*). The content of a legal norm is not frozen since every society continues to develop and its legal system also evolves accordingly. Hence, also those processes that have taken place following the adoption of a norm determine its content. Consequently, the Constitutional Court will interpret the contested norm by taking into consideration its objective aim now, in 2018, taking into account the current development of Latvia as a democratic state governed by the rule of law.

**13.3.** In examining the development of the Latvian legal system, the Constitutional Court takes into account that various restrictions regarding the participation in the work of the state for persons who after 13 January 1991 had been active in the organisations referred to in the contested norm are included also in other laws. For example, Article 3(6) of the Law on Electing the President of the State provides that such a person cannot be elected to the office of the President. Pursuant to Article 12 of the Law on the Structure of the Cabinet of Ministers a person who, in accordance with the contested norm, cannot be proposed as the candidate for *Saeima* elections and cannot be elected to the

*Saeima*, cannot be proposed and approved as a member of the Cabinet (the Prime Minister or a Minister). Likewise, a person who after 13 January 1991 had been active in the organisations referred to in the contested norm pursuant to Article 18(2)(10) of the law “On State Security Institutions” may not be an official or an employee of state security institutions. The state has also established that those persons who after 13 January 1991 had been active in the organisations referred to in the contest norm are not admitted to the Latvian citizenship (*see Article 11(1)(6) of the Citizenship Law*).

Other measures have been envisaged in the legal system to protect the principles of Latvia as a democratic state governed by the rule of law. Thus, Article 4<sup>1</sup> of the law On Safety of Public Entertainment and Festivity Events establishes a prohibition to use, including in a stylised way, the flags, coats of arms and anthems of the former USSR, former republic of the USSR and fascist Germany, fascist swastika, SS signs and Soviet symbols – sickle and hammer along with a five-pointed star, except for cases when the purpose of use of them is not related to glorification of totalitarian regimes or condoning of committed criminal offences.

One of the tools that the state uses to protect its democratic order is the criminal liability for criminal offences against the state, envisaged in the Criminal Law. For example, Article 80 of the Criminal Law establishes criminal liability for actions that are directed against the national independence, sovereignty, territorial integrity, state power or state order of the Republic of Latvia in a manner that is not provided for in the *Satversme*. Likewise, Article 80<sup>1</sup> of the Criminal Law establishes criminal liability for merging in an organised group with the purpose to take action against the Republic of Latvia. Article 81 of the Criminal Law, in turn, provides that a person must be made criminally liable for making a public invitation to take action against the national independence, sovereignty, territorial integrity, state power or the state order of the Republic of Latvia in a manner that is not provided for in the *Satversme* or for distribution of materials containing such invitation.

The Constitutional Court notes that in Latvia’s situation, both the “aspect ... of the re-establishing of a democratic order after an undemocratic (totalitarian) regime ... and the re-establishing of a[n occupied] state” must be taken into account (*see: the dissenting opinion of judge Levits, judgment of the European Court of Human Rights of 17 June 2004 in the case “Ždanoka v. Latvia”*, application no. 58278/00). The occupation which lasted for fifty years

has left far-reaching consequences in the Latvian society which continue to influence democracy even now. A significant part of society is still open to totalitarian ideas and has a positive assessment of the period of the occupation by the USSR (*see the case materials, vol. 2, p. 91*). The process of examining the consequences of the politics of the totalitarian regime and the occupation has still not been completed in the Latvian society. This process, as the similar experience of other countries shows, is lengthy (*see: Boven T. C. van. Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: Final report. UN Sub-Commission on the Promotion and Protection of Human Rights, 2 July 1993*).

The Constitutional Court concludes that the contested norm is one of the tools of militant democracy that a democratic state governed by the rule of law uses to protect its constitutional bodies and state security institutions from persons who by their actions imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law. As noted by the summoned person I. Ījabs, this, in particular, applies to the transitional period, when, with the aim of ensuring sustainability of democracy in the country, the state might need to take special measures to defend itself (*see the case materials, vol. 2, p. 89*). Therefore, in particular in a state where the traditions of democracy have not yet become fully consolidated, it might be necessary to prevent actions taken by a person who after 13 January 1991 had been active in the organisations referred to in the contested norm if such actions are directed against the national independence of Latvia and the principles of a democratic state governed by the rule of law, even such actions do not reach the threshold of danger that could be qualified in accordance with the elements of crimes against the state that are included in the Criminal Law. A democratic state governed by the rule of law has the right to demand from the persons who take public offices loyalty to the state and, in particular, to the constitutional principles, on which it is based (*see the decision of the European Court of Human Rights of 18 November 2014 in the case "Spūlis and Vaškevičs v. Latvia", applications nos. 2631/10 and 12253/10, para. 42*). Hence, the aim of the contested norm requires a broader examination – of its objective meaning which comprises also the protection of the national independence of Latvia and the principles of Latvia as a democratic state governed by the rule of law that are derived from the basic norm of a democratic state governed by the rule of law and are included in the *Satversme*, against persons who imperil these when acting in constitutional bodies and security

institutions. The concept of “being active” included in the contested norm denotes actions that are contrary to the aim of this norm.

**13.4.** In view of the above, the contested norm should be interpreted to mean that it prohibits from standing for the *Saeima* elections a person who after 13 January 1991 has been active in the Communist Party of the Soviet Union (the Communist Party of Latvia), Working People’s International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees and by her actions imperilled and still continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law. Actions that, *inter alia*, deny Latvia as an independent state, are directed against its democratic order, support international crimes, can be assessed as actions directed against the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

**14.** The Constitutional Court must verify whether and to what extent, considering the content of the contested norm, the claim in the case under review has already been previously adjudicated.

The Constitutional Court has found already in 2006 that in the judgment in the case no. 2000-03-01 also the claim regarding the compliance of the contested norm with Articles 1 and 9 of the *Satversme* had been adjudicated. However, the Court took into account that in the case no. 2000-03-01 the proportionality of the restriction included in the contested norm was examined in the particular circumstances that were present at the moment of pronouncing the judgment but had not been assessed “forever”. Therefore, in the judgment in the case no. 2005-13-0106 the Constitutional Court examined also whether the restriction on a person’s rights included in the contested norm, namely the prohibition to stand for elections, has a legitimate aim and whether the restriction is proportionate to its legitimate aim. Whereas with regard to the claim requesting the review of the compliance of the contested norm with Article 91 of the *Satversme* the Constitutional Court found that the claim as to whether the contested norm envisaged differential treatment depending on a person’s political views had already been adjudicated in the judgment in the case no. 2000-03-01. Hence, in the judgment in the case no. 2005-13-0106 the Constitutional Court examined only whether the fundamental rights were not restricted in a discriminatory way. In its judgment in the case no. 2005-13-0106 the Constitutional Court, *inter alia*,

ruled that the contested norm complied with Articles 1, 9, and 91 of the *Satversme* (see the judgment of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, paras. 10.2, 11.3, 11.4, 12 and the resolute part).

In the case under review the claim regarding the compliance of the contested norm with Articles 1 and 9 of the *Satversme* has not substantially changed compared with the claim examined in the cases no. 2000-03-01 and no. 2005-13-0106. Whereas with respect to the claim regarding the compatibility of the contested norm with Article 91 of the *Satversme* the application presents legal arguments regarding violation of the equality principle, which have not been examined either in the judgment in the case no. 2000-03-01 or in the judgment in the case no. 2005-13-0106. Therefore the claim regarding the compliance of the contested norm with Article 91 of the *Satversme* has substantially changed compared with the one reviewed in the cases no. 2000-03-01 and no. 2005-13-0106.

The Constitutional Court has found that, if the facts of the case have changed significantly, the claim can no longer be considered as having been adjudicated. Therefore, in individual cases, after examining the facts of the case and the findings expressed in the previous judgment, as well as changes in the legal system and establishing that significant new circumstances exist, the Constitutional Court may review an already adjudicated claim. Likewise, changes in the interpretation of a legal norm due to changes in the living conditions and the public opinion may be considered as a new circumstance due to which the claim cannot be regarded as one that has already been adjudicated (see the judgment of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, paras. 10.1 and 10.3).

Both in the judgment in the case no. 2000-03-01 and in the judgment in the case no. 2005-13-0106 the Constitutional Court has underscored that, in view of the historical circumstances in which the Latvian democracy has developed, the current political situation in the country and the attendant circumstances related to it, the restriction included in the contested norm should be retained for some time; however, the necessity and the justification of retaining this restriction had to be reviewed periodically (see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 6 of the motives part, and the judgment of 15 June 2006 in the case no. 2005-13-0106, paras. 10.2 and 17.3). The European Court of Human Rights has also pointed to the increasing level of stability of the Latvian democracy, which has been facilitated by Latvia's full

integration in Europe, and has urged Latvia to regularly review the restriction included in the contested norm (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case “Ždanoka v. Latvia”, application No. 58278/00, para. 135*).

The Constitutional Court takes into account the fact that the case no. 2005-13-0106 was examined twelve years ago. In para 13.4 of this judgment the Constitutional Court found that currently the contested norm was to be interpreted to mean that it prohibits from standing for the *Saeima* elections a person who after 13 January 1991 has been active in the organisations referred to in the contested norm and by her actions imperilled and still continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law. This is to be deemed a substantial new circumstance; therefore the claim regarding the compliance of the contested norm with Articles 1 and 9 of the *Satversme* cannot be regarded as an already adjudicated claim. Whereas the claim regarding the review of the compliance of the contested norm with Article 91 of the *Satversme* has changed on its merits and, thus, cannot be regarded as having been already adjudicated in this part either.

**Hence, the legal proceedings in the case must be continued.**

**15.** The case under review was initiated on the basis of a constitutional complaint. The Constitutional Court has noted that pursuant to Article 19<sup>2</sup>(1) and Article 19<sup>2</sup>(6)(1) of the Constitutional Court Law in the case of a constitutional complaint it is important to establish whether indeed the Applicant’s fundamental rights enshrined in the *Satversme* have been infringed upon (*see the judgment of the Constitutional Court of 15 April 2009 in the case no. 2008-36-01, para. 9*). A panel of the Constitutional Court, when examining the submitted constitutional complaint and deciding on the initiation of a case, assesses the compliance of the constitutional complaint with the requirements of the Constitutional Court Law; it verifies, *inter alia*, whether the Applicant has substantiated the existence of an infringement upon her fundamental rights. The Court, in turn, in the course of deciding the case verifies whether an infringement exists, taking into account the materials and opinions collected in the case-file (*see the judgment of the Constitutional Court of 10 May 2013 in the case no. 2012-16-01, para. 21.2*).

In view of the above, before reviewing the compliance of the contested norm with Articles 1, 9, and 91 of the *Satversme*, the Constitutional Court must

verify whether the contested norm, taking into account its content, infringes upon the Applicant's fundamental rights enshrined in the *Satversme*.

Usually at the moment when a constitutional complaint is submitted a person's fundamental rights already have been infringed upon and an existing infringement of a person's fundamental rights is identified (*see, for example, the judgment of the Constitutional Court of 18 February 2010 in the case no. 2009-74-01, para. 12*). However, as noted in the legal doctrine, the identification and observance of an existing infringement as one element of an infringement is not absolute. Particularly in the Latvian model of constitutional complaint which allows contesting only a legal enactment or a provision thereof rather than an individual legal act deviations from the existing requirements regarding an infringement are possible (*see: Rodiņa A. Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga: Latvijas Vēstnesis, 2009, p. 161*). It is possible that there might be situations where an infringement on a person's fundamental rights might occur only at some future moment; in such cases only a future or a potential infringement could be identified. In the case of a future infringement it is evident that a person will incur it sooner or later, but it will definitely occur. Whereas in the case of a potential infringement only a probability can be discerned that the person will incur an infringement; however, there is an equal probability that the contested norm will not affect the person in question. A potential infringement on fundamental rights can be the grounds for initiating a case and hearing it on its merits only in those cases where the adverse consequences envisaged in law that would set in for the person if the legal norm were applied are of a particularly negative nature (*see the judgment of the Constitutional Court of 10 May 2013 in the case no. 2012-16-01, paras. 23 and 23.2*).

The contested norm prohibits from standing for the *Saeima* elections a person who after 13 January 1991 has been active in the Communist Party of the Soviet Union (the Communist Party of Latvia), Working People's International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees and by her actions imperilled and still continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

It follows from the materials in the case that the fact that the Applicant had been active in the CPL after 13 January 1991 had been established by a judgment

of a court (*see the case materials, vol. 1, pp. 13–15*). Thus, the Applicant falls within the scope of the contested norm, namely, by a decision of the Central Election Commission she has already been deleted from the list of candidates submitted for the *Saeima* election (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case “Ždanoka v. Latvia”, application No. 58278/00, para. 49*). It follows from the case materials that the Applicant wishes to stand for the 13<sup>th</sup> election of the *Saeima*. She had requested the Central Election Commission to provide an explanation on whether she could be proposed as a candidate for the *Saeima* election. In a statement of 4 August 2017 the Central Election Commission indicated to the Applicant that pursuant to the contested norm she had no right to propose her candidacy for the *Saeima* election (*see the case materials, vol. 1, pp. 10–15*).

If the Applicant were proposed as a candidate for the *Saeima* election, when applying the contested norm in accordance with its content revealed in para. 13.4 of this judgment it would be assessed whether the Applicant still imperils the national independence of Latvia and the principles of a democratic state governed by the rule of law. It is possible that, in such a case, the Applicant could stand for the *Saeima* election; however, it is equally possible that her right to stand for the *Saeima* election would be restricted. The prohibition from standing for the *Saeima* election would mean that significant and irreversible consequences would set in for the Applicant. Namely, she would not be able to stand for the 13<sup>th</sup> *Saeima* election. The Constitutional Court already has recognised that, in a democratic state, the right to stand for election should be deemed to be a very essential right of a person (*compare: the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 1 of the motives part*). Therefore the Constitutional Court must verify whether the legal norm, the application of which might cause to the Applicant significant and irreversible consequences, complies with the *Satversme*. In the case under review in accordance with the principle of procedural economy it would not be expedient to wait if and when a person’s fundamental rights would be infringed, i.e., when the Applicant would be prohibited from standing for the *Saeima* election and to examine the constitutionality of the contested norm only afterwards.

The following finding has been expressed in the case-law of the Constitutional Court: to effectively protect a person’s rights guaranteed in the *Satversme*, the Constitutional Court must examine the actual exercise thereof (*see*

*the judgment of the Constitutional Court of 21 October 2009 in the case no. 2009-01-01, para. 11.3).* Moreover, the Constitutional Court has recognised that in the case of doubts regarding the possibility to terminate legal proceedings, the Court has the obligation *ex officio* to hear the case on its merits and to provide as extensive an assessment as possible of whether the Applicant's fundamental rights have been violated (*see the judgment of the Constitutional Court of 19 November 2009 in the case no. 2009-09-03, para. 10).*

**Hence, the legal proceedings in the case must be continued in order to examine the compliance of the contested norm with Articles 1, 9, and 91 of the *Satversme*.**

16. The Applicant requests an examination of the compliance of the contested norm with Articles 1, 9, and 91 of the *Satversme* because she considers that it places a disproportionate restriction on her right to stand for the *Saeima* elections and violates the equality principle.

If the compliance of a legal norm with several norms of the *Satversme* is contested, then the Constitutional Court, taking into account the substance of the case, must determine the most effective approach to reviewing this compliance (*see the judgment of the Constitutional Court of 8 March 2017 in the case no. 2016-07-01, para. 14.2).*

It follows from the materials of the case that the principal issue of the case, namely, the issue of a person's right to stand for the *Saeima* elections, first and foremost pertains to the Applicant's rights included in Articles 1 and 9 of the *Satversme*. After the compliance of the contested norm with Articles 1 and 9 of the *Satversme* will have been examined, it will be possible, in turn, on the basis of the conclusions made, to examine its compliance with Article 91 of the *Satversme*.

Hence, the Constitutional Court will first examine the compliance of the contested norm with Articles 1 and 9 of the *Satversme* and following that – its compliance with Article 91 of the *Satversme*.

17. Article 1 of the *Satversme* provides: "Latvia is an independent democratic republic."

One of the elements that characterise a democratic state order is free elections. Latvia as a democratic state must provide for such a legal order that

provides the possibility to the bearer of the sovereign power – the people – to express its will. The Constitutional Court has already recognised that the electoral rights are one of the most important political rights (*see the judgment of the Constitutional Court of 23 September 2002 in the case no. 2002-08-01, the motives part*). The aim of political rights is to ensure a person's rights to participate in the governance of a democratic state, thus influencing the political processes within the state.

Article 6 of the *Satversme* provides that the *Saeima* is elected in general, equal and direct elections, and by secret ballot based on proportional representation. The term “general election” means that every citizen has the right to vote and to stand for elections (*compare: the judgment of the Constitutional Court of 23 September 2002 in the case no. 2002-08-01, the motives part*). The state has the obligation not only to guarantee to every citizen the formal right to participate but also to create pre-conditions that would allow a citizen to participate in the activities of the state (*see the judgment of the Constitutional Court of 7 November 2013 in the case no. 2012-24-03, para. 13*).

The Constitutional Court has already noted that the state enjoys broad discretion in the implementation of electoral rights (*see the judgment of the Constitutional Court of 23 September 2002 in the case no. 2002-08-01, the motives part*). This means that the legislator enjoys discretion in regulating the procedure, in which the members of the *Saeima* are elected.

Article 9 of the *Satversme* provides: “Any citizen of Latvia who enjoys full rights of citizenship and who is more than twenty-one years of age on the first day of elections may be elected to the *Saeima*.” Thus, the *Satversme* itself sets out restrictions on a person's right to stand for elections, and these are linked to a person's full rights of citizenship and age.

To reveal the content of individual norms of the *Satversme* in a more comprehensive and objective way, they must be specified in interconnection with the general principles of law and other norms of the *Satversme*. Application of the principle of the unity of the *Satversme* is based on the assumption that *Satversme* is a coherent whole (*compare: judgment of the Constitutional Court of 27 June 2003 in the case no. 2003-04-01, para. 1.1 of the motives part*).

The first part of Article 101 of the *Satversme* provides that every citizen of Latvia has the right, as provided for by law, to participate in the work of the state and of local government, and to hold a position in the civil service. Hence, any restrictions and conditions that regulate the participation in the work of the state

or local government must be established by law. The Constitutional Court already has recognised that the legislator has the competence to determine who is to be considered as a person “with full rights of citizenship” within the meaning of this article (*see the judgment of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, para. 13.2*). Hence, the term used in the *Satversme* – “with full rights of citizenship” – must be examined in interconnection with the *Saeima* Election Law.

**17.1.** In establishing the content of fundamental rights defined in the *Satversme*, Latvia’s international commitments in the field of human rights must be taken into account. The state’s obligation to meet the international obligations in the field of human rights is included, *inter alia*, in Article 89 of the *Satversme*, which provides that the state has the obligation to recognise and protect fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. The constitutional legislator’s aim had been to achieve harmony between the norms of human rights included in the *Satversme* and the international norms of human rights (*see the judgment of the Constitutional Court of 15 March 2018 the case no. 2017-16-01, para. 9.1*).

In the case under review, Articles 1 and 9 of the *Satversme* must be reviewed in interconnection with Article 3 of the First Protocol to the Convention, as well as the case-law of the European Court of Human Rights regarding its application (*compare: the judgment of the Constitutional Court of 22 February 2010 in the case no. 2009-45-01, para. 9*).

Article 3 of the First Protocol to the Convention provides that Member States of the Convention commit themselves to holding free elections at reasonable intervals by secret ballot, under conditions, which will ensure the free expression of the opinion of the electorate in the choice of legislature.

The European Court of Human Rights has recognised that Article 3 of the First Protocol to the Convention indirectly envisages a person’s rights, *inter alia*, the right to vote and the right to stand for election. However, in view of the fact that the historical and political conditions differ in each country, the states enjoy broad discretion in setting the rules with respect to the status of a member of the parliament, *inter alia*, to define the criteria, due to incompatibility with which persons may not be elected. Moreover, the state may set additional criteria for exercising a person’s right to stand for election (*see the judgment of the European Court of Human Rights of 2 March 1987 in the case “Mathieu-Mohin and Clerfagt v. Belgium”, application no. 9267/81, para. 54, and the judgment of*

9 April 2002 in the case “Podkolzina v. Latvia”, application no. 46726/99, para. 34).

Hence, the legislator has the right to determine, in a concrete form, namely by law, the procedure in which a person may exercise her right to stand for the *Saeima* elections, and, *inter alia*, also set restrictions on exercising this right. However, in setting such restrictions, the legislator must abide by the norms of the *Satversme* and by other general principles of law, including the principle of proportionality and the equality principle.

**17.2.** The contested norm prohibits from standing for the *Saeima* elections a person who after 13 January 1991 has been active in the organisations referred to in the contested norm and by her actions imperilled and still continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

**Hence, the contested norm restricts a person’s right to stand for the *Saeima* elections.**

**18.** A person’s right to stand for elections may be restricted; however, the Constitutional Court must examine whether the restriction is justified, i.e., whether: 1) it has been established by law; 2) it has a legitimate aim; 3) it is proportionate (*compare the judgment of the Constitutional Court of 23 September 2002 in the case no. 2002-08-01, the motives part, and the judgment of 15 June 2006 in the case no. 2005-13-0106, para. 11.3*).

**19.** To examine whether the restriction on fundamental rights had been established by law adopted in due procedure, it must be verified:

1) whether the law has been adopted in compliance with the established procedure;

2) whether the law has been promulgated and is publicly accessible in compliance with the legal requirements;

3) whether the law has been worded with sufficient clarity that allows a person to understand the content of the rights and obligations that follow from it and to predict the consequences of its application, and whether the law ensures protection against its arbitrary application (*see, for example, the judgment of the Constitutional Court of 8 April 2015 in the case no. 2014-34-01, para. 14*).

Although the Applicant notes that the restriction included in the contested norm due to its general and out-dated nature has not been established by law, she

has not indicated any aspects in the adoption, promulgation or comprehensibility of the contested norm that would put in doubt that the restriction on fundamental rights included in this norm had been adopted by law; neither does it follow from the case materials.

The Constitutional Court has already recognised that the restriction on fundamental rights included in the contested norm at the time of its adoption was established by law (*see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 5 of the motives part, and the judgment of 15 June 2006 in the case no. 2005-13-0106, para. 15*). The contested norm was adopted by the *Saeima* Election Law of 25 May 1995. The law was adopted and promulgated in the official journal “*Latvijas Vēstnesis*” in the procedure established by the *Satversme* and the *Saeima* Rules of Procedure. A restriction clearly follows from the contested norm that prohibits a person who, by being active in the organisations referred to in the contested norm, by her actions imperilled and still continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law, from standing for the *Saeima* elections, since the aim of the contested norm has not substantially changed over time. The original intention of the legislator in adopting the contested norm, namely, the protection of the constitutional body – the legislator – from persons who by their actions imperil the national independence of Latvia and the principles of a democratic state governed by the rule of law, is the objective aim of this norm also now and in the current legal system. A person is able to understand the content of the restriction and to predict the consequences of the application thereof. Hence, the contested norm has been worded with sufficient clarity and the consequences of its application are predictable.

**Thus, the restriction on fundamental rights included in the contested norm has been established by law.**

**20.** Any restriction on fundamental rights should be based on conditions and reasoning regarding their necessity, namely, the restriction is established for significant interests – a legitimate aim (*see, for example, the judgment of the Constitutional Court of 22 November 2011 in the case no. 2011-04-01, para. 16*).

If restrictions on rights have been established, then in the legal proceedings before the Constitutional Court it is primarily the institution which has adopted the contested act who has the obligation to present and substantiate the legitimate

aim of such restrictions; in this particular case it is the *Saeima* (see, for example, the judgment of the Constitutional Court of 1 November 2012 in the case no. 2012-06-01, para. 12, and the judgment of 11 December 2014 in the case no. 2014-05-01, para. 18).

The Constitutional Court in its judgment in the case no. 2000-03-01 and in its judgment in the case no. 2005-13-0106 found that the restriction on fundamental rights had a legitimate aim – protection of the democratic order of the state, national security and Latvia’s territorial unity (see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 6 of the motives part, and the judgment of 15 June 2006 in the case no. 2005-13-0106, para. 16). The European Court of Human Rights also has recognised that the restriction on a person’s right to stand for elections is compatible with the general aims of the Convention – the protection of the state’s independence, democratic order and national security (see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case “*Ždanoka v. Latvia*”, application No. 58278/00, para. 118).

The *Saeima* notes in its written reply that the restriction on the passive electoral right included in the contested norm continues to have a legitimate aim – the protection of the democratic state order (see the case materials, vol. 1, pp. 32–33). The summoned persons – the Ministry of Justice, the Ombudsman, the Security Police, the Constitution Protection Bureau and E. Levits – also agree that the restriction on fundamental rights included in the contested norm has a legitimate aim (see the case materials, vol. 2, pp. 70, 74–75, 83–85, 113–115). The Applicant, however, is of the opinion that with Latvia’s integration in the European Union the restriction on fundamental rights no longer has a legitimate aim (see the case materials, vol. 1, pp. 4–5).

**20.1.** The Constitutional Court in its judgment in the case no. 2000-03-01 concluded that the aims of the organisations referred to in the contested norm had been linked to undermining the restored democratic order. The aim of the restriction included in the contested norm is to protect the democratic state order from persons who have attempted to undermine it and, thus, by their actions have proven that they are not loyal to the state of Latvia (see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 6 of the motives part). Whereas in the judgment in the case no. 2005-13-0106 the Constitutional Court noted that the restriction on fundamental rights included in the contested norm was not only past- but also future-oriented (see the judgment

of the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, para. 16.3).

It has been recognised in the case-law of the European Court of Human Rights that any restrictions on electoral rights should be examined in the context of the state's democratic development (*see the judgment of the European Court of Human Rights of 2 March 1987 in the case "Mathieu-Mohin and Clerfagt v. Belgium", application no. 9267/81, para. 54, and the judgment of 9 April 2002 in the case "Podkolzina v. Latvia", application no. 46726/99, para. 33*).

Therefore, in the case under review, the Constitutional Court must examine whether the restriction on fundamental rights continues to have a legitimate aim, taking into account the current level of development of democracy in the society and in the state.

**20.2.** The European Court of Human Rights has noted: it cannot be ruled out that a person or a group of persons will rely on the rights enshrined in the Convention or its Protocols in order to attempt to derive therefrom "the right" to conduct what amounts in practice to activities intended to destroy the rights or freedoms set forth in the Convention; any such destruction would put an end to democracy. It was precisely this concern which led the authors of the Convention to introduce Article 17, which provides: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." Taking this into account, the European Court of Human Rights has found that no one should be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case "Ždanoka v. Latvia", application No. 58278/00, para. 99*).

Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing (*see: the Vienna Declaration and the Programme of Action, the World Conference on Human Rights, 1993, para. 8*). A person's rights and freedoms can be most effectively exercised in the conditions of democracy. However, the exercise of a person's rights may not be directed against the national independence and the principles of a democratic state governed by the rule of law. The European Court of Human Rights has already recognised that, in order to guarantee the stability and

effectiveness of a democratic system, the State may be required to take specific measures to protect itself (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case “Ždanoka v. Latvia”, application No. 58278/00, para. 100*).

The first paragraph of the preamble to the *Satversme* provides that “the state of Latvia has been established [...] to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries, to ensure freedom and promote welfare of the people of Latvia and each individual”. To ensure this, the people of Latvia must protect their sovereignty, national independence, territory, territorial integrity and democratic system of government of the State of Latvia (*see the second sentence of the fourth paragraph in the preamble to the Satversme*). E. Levits notes that, in view of the historical and also the present political and geopolitical context of Latvia it must be admitted that the restriction on the right to stand for elections included in the contested norm serves the purpose of protecting the state and its democracy within the meaning of the principle of militant democracy. I. Ījabs also considers that the contested norm is a tool of militant democracy (*see the case materials, vol. 2, pp. 92, 109 and 115*).

I. Ījabs concludes that, although researchers of democracy unanimously recognise that Latvia is a democratic state, in the Latvian society itself democracy is far from being generally accepted and self-evident. Therefore there are no grounds to consider that the Latvian democracy had become sufficiently stable over time (*see the case materials, vol. 2, p. 91*). E. Levits also indicates that the awareness of the state and democracy has not yet become sufficiently consolidated in the society (*see the case materials, vol. 2, p. 117*). The legislative power is implemented also by the *Saeima* as a body of deputies who have a particularly important role in a parliamentary democratic state. Pursuant to Article 18 of the *Satversme* a person who has been elected to the *Saeima* acquires the mandate of a member of the *Saeima*, upon giving this solemn promise: “I, upon assuming the duties of a member of the *Saeima*, before the people of Latvia, do swear (solemnly promise) to be loyal to Latvia, to strengthen its sovereignty and the Latvian language as the only official language, to defend Latvia as an independent and democratic State, and to fulfil my duties honestly and conscientiously. I undertake to observe the Constitution and laws of Latvia.” The status of a member of the *Saeima* requires the state to set special requirements for the respective persons, the aim of which is the protection of the

national independence of Latvia and the principles of democratic state governed by the rule of law.

The legitimate aim of the restriction established by the contested law is to preclude a person who by her actions imperils the national independence of Latvia and the principles of a democratic state governed by the rule of law from standing for the *Saeima* elections. This aim has been advanced in accordance with the principle of militant democracy. The protection of a democratic state order is a legitimate aim which justifies the fact that a person's right to stand for the *Saeima* elections is restricted.

**Hence, the restriction on fundamental rights included in the contested norm has a legitimate aim – the protection of a democratic state order.**

**21.** Once the legitimate aim on the restriction on fundamental rights has been established, the compliance of the restriction with the principle of proportionality must be examined. To examine the proportionality of a restriction on fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are appropriate for reaching the legitimate aim or whether the legitimate aim can be attained by the chosen measure;

2) whether such action is necessary or whether the legitimate aim could be reached by measures that are less restrictive upon a person's rights;

3) whether the restriction is adequate or whether the benefit that society gains outweighs the damage inflicted on a person's rights.

If, in examining a legal norm, it is recognised that it does not meet even one of these criteria then it is incompatible also with the principle of proportionality and is unlawful.

**22.** The measure chosen by the legislator is appropriate for reaching the legitimate aim if this aim is attained by the particular regulation (*see, for example, the judgment of the Constitutional Court of 7 October 2010 in the case no. 2010-01-01, para. 13*).

The restriction included in the contested norm ensures that a person who by her actions imperilled and continues to imperil the national independence of Latvia and the principles of a democratic state governed by the rule of law cannot be proposed as a candidate for the *Saeima* elections. This ensures that such a person may not be elected to the *Saeima*. Hence, the restrictions on a person's

fundamental rights included in the contested norm is appropriate for reaching its legitimate aim – the protection of democratic state order.

**Hence, the measure chosen by the legislator is appropriate for reaching the legitimate aim.**

**23.** A restriction on fundamental rights is necessary if there are no other measures that would be as effective and would restrict persons' fundamental rights to a lesser extent.

However, a more lenient measure cannot be any other measure but only such a measure by which the legitimate aim can be reached in at least the same quality (*see, for example, the judgment of the Constitutional Court of 7 October 2010 in the case no. 2010-01-01, para. 14*). The Constitutional Court is competent to verify whether no alternative measures exist that would be less restrictive on persons' rights established in the *Satversme* (*see, for example, the judgment of the Constitutional Court of 24 November 2017 in the case no. 2017-07-01, para. 19*).

The Applicant considers that an alternative measure would be the publication of information about the candidate in the official journal "Latvijas Vēstnesis" along with an informative note about the person's activities in the CPL (*see the case materials, vol. 1, p. 6*).

The *Saeima*, however, notes that no other alternative, less restrictive measures exist. An informative note about a person's activities in the CPL or other organisations referred to in the contested norm would not allow reaching the legitimate aim of the restriction on fundamental rights in the same quality. Although there is an assumption in a democratic society that a voter who has access to comprehensive and transparent information about the candidate proposed for the election is able to make his choice himself, this assumption does not exclude the right of the state to establish restrictions on a person's possibilities to stand for the *Saeima* elections (*see the case materials, vol. 1, pp. 33–34*). The opinion that the legitimate aim could not be reached in at least the same quality by the alternative measure indicated by the Applicant is supported also by the Ministry of Justice and E. Levits (*see the case materials, vol. 2, pp. 70 and 116*).

The Constitutional Court has already concluded that the procedure of elections is closely linked to the historical development, political situation and a number of other factors in each country (*compare: the judgment of the*

*Constitutional Court of 5 February 2015 in the case no. 2014-03-01, para. 23).* The European Court of Human Rights has recognised that the restriction included in the contested norm should be examined by taking into account the State's broad discretion in establishing such restrictions (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case "Ždanoka v. Latvia", application No. 58278/00, para. 115*). Therefore the Constitutional Court in considering whether no more lenient measures exist for reaching the legitimate aim must take into account that the state enjoys broad discretion in organising its system of elections.

The *Saeima* and the persons summoned in the case in substantiating that the measure indicated by the Applicant would not reach the legitimate aim of the restriction on fundamental rights in the same quality underscored that the development of Latvia as a democratic state and the political situation should be taken into account. Allegedly, in the current political circumstances this measure cannot be considered as an alternative to the one chosen by the legislator.

The Constitutional Court holds: although Latvia is a Member State of the European Union, NATO, the Council of Europe, the Organisation for Economic Co-operation and Development, as well as of other organisations, this circumstance *per se* does not exclude possible threats to the state of Latvia. I. Ījabs underscores that Latvia's integration in the European Union could be regarded as an important indirect proof of the stability of Latvia's democracy; however, it is far from being a direct proof of this. Likewise, the time that has passed since the restoration of Latvia's independence is not the sole and the most significant factor that stabilises the democratic regime (*see the case materials, vol. 2, pp. 89–91*). The Security Police notes that level of democratisation of the state of Latvia has increased over time; however, Latvia's membership in certain international organisations or the length of this membership cannot be regarded as a sufficient yardstick of stability (*see the case materials, vol. 2, pp. 84–85*).

The Constitution Protection Bureau and the Security Police, when analysing the political situation in the state, as well as the whole of Europe, points to the possible threats that the state of Latvia, its democratic order and security could incur by the revoking the restriction established in the contested norm (*see the case materials, vol. 2, pp. 82–85*). Moreover, as noted above, democracy in the Latvian society is far from being perceived as self-evident. The contested norm is one of the tools that currently ensure the protection of Latvia's national

independence and the principles of a democratic state governed by the rule of law.

The state in protecting its democratic order has the right to assess independently the degree to which it is imperilled and decide on retaining the restriction in the future. If the legislator, by exercising its discretion, has decided that the restriction included in the contested norm continues to be necessary, then a regulation which would allow the respective person to stand for the *Saeima* elections and would require only providing information about her activities in one of the organisations referred to in the contested norm cannot be deemed to be a more lenient measure. In view of the above, it must be concluded that the measure pointed out by the Applicant would not ensure protection of a democratic state order in the same quality as it is ensured by the restriction established by the contested norm.

**Hence, the legitimate aim cannot be reached by other measures in the same quality.**

**24.** In examining the compliance of the restriction on fundamental rights included in the contested norm with the legitimate aim it must be verified whether the adverse consequences that a person incurs as the result of the restriction on her fundamental rights do not outweigh the benefit that the general public gains from restriction. The interests that need to be balanced in the case and which of these interests should be granted priority must be established (*see the judgment of the Constitutional Court of 7 October 2010 in the case no. 2010-01-01, para. 15*).

**24.1.** The Applicant considers that the restriction on fundamental rights included in the contested norm is not proportionate because it is lasting. Moreover, the legislator allegedly has not reviewed the necessity for it (*see the case materials, vol. 1, p. 4*).

The Constitutional Court has already recognised that the restriction on fundamental rights included in the contested norm may exist only for a definite period of time; therefore the legislator, by regularly assessing the political situation in the state, must decide on the necessity and justification of this restriction (*see the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 7 of the motives part*). The Constitutional Court has pointed to the need to review this restriction within as short period of time as possible also in its judgment in the case no. 2005-13-0106 (*see the judgment of*

*the Constitutional Court of 15 June 2006 in the case no. 2005-13-0106, para. 18.8).* Likewise, the European Court of Human Rights in its judgment of 16 March 2006 in the case “*Ždanoka v. Latvia*” has noted that the Latvian parliament must keep the restriction included in the contested norm under constant review, with a view to bring it to an early end (*see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case “Ždanoka v. Latvia”, application No. 58278/00, para. 135*). It has been recognised in the case-law of the European Court of Human Rights that, in assessing the proportionality of a restriction, the existence of a time-limit and the possibility to review it are essential (*see the judgment of the Grand Chamber of the European Court of Human Rights of 6 January 2011 in the case “Paksas v. Lithuania”, application No. 34932/04, para. 109*).

The *Saeima* indicates that in the above-mentioned judgments an obligation was imposed on the legislator to review regularly the need for such restriction, by taking into account the public opinion and the political situation in the state, rather than revoke the restriction included in the contested norm as of a specific date. The legislator is said to have complied with this obligation (*see the case materials, vol. 1, pp. 34–35*).

Information obtained while preparing the case confirms that prior to 2010 the legislator had reviewed the necessity of the contested norm on several occasions. On 26 April 2007 the *Saeima*, when examining in the second reading the draft law No. 220/Lp9 “Amendments to the *Saeima* Election Law”, dismissed the proposal made by the member of the *Saeima* V. Buzajevs to strike the contested norm from the law. On 29 January 2009, when examining in the second reading the draft law No. 566/Lp9 “Amendments to the *Saeima* Election Law”, the *Saeima* dismissed the proposal made by the member of the *Saeima* S. Agešins to strike the contested norm from the law. At the meeting of the Legal Commission of the 9<sup>th</sup> *Saeima* on 20 January 2009 a number of members of the Commission had noted that Latvia’s internal political situation, as well as the situation in Europe proved that the restriction on fundamental rights included in the contested norm was necessary (*see the minutes and the audio-recording of the meeting of the Legal Commission of the 9<sup>th</sup> Saeima on 20 January 2009, the case materials, vol. 1, pp. 123–129*). During the debates in the *Saeima* the deputies who voted “against” the respective proposal noted that the contested norm continued to be necessary to prevent threats to the national security and independence and that the legitimate aim of this restriction could be discerned

(see the transcript of the session of the 9<sup>th</sup> Saeima on 29 January 2009). Likewise, on 25 February 2010, when examining in second reading the draft law No. 1215/Lp9 “Amendments to the Saeima Election Law”, the Saeima dismissed the proposal made by the faction “For Human Rights in United Latvia” to strike the contested norm from the law. It was emphasised during the debates that the restriction included in the contested norm had to be maintained and that the moment when this restriction would have to be deleted from the Saeima Election law had not yet arrived (see the transcript of the session of the 9<sup>th</sup> Saeima on 25 February 2010). Most recently, the Saeima examined the contested norm as regards its wording in 2014. On 6 February 2014 the Saeima by the law “Amendments to the Saeima Election Law” expressed Article 5 of the Saeima Election Law and, thus, also the contested norm, in a new wording.

The Constitutional Court finds that the last time when the legislator examined the substance of the restriction included in the contested norm was in 2010. The Constitutional Court notes: although neither the Convention nor the *Satversme* define how regularly the legislator should review the particular restriction on a person’s right to stand for elections, the fact that after 2010 the Saeima has not reviewed this restriction should be assessed negatively. However, within the system of Latvia’s constitutional bodies the verification whether the retention of the restriction on fundamental rights included in the contested norm after 2010 has a reasonable justification, i.e., that this restriction has not been set arbitrarily falls also within the jurisdiction of the Constitutional Court. Hence, the Constitutional Court must ascertain whether there are circumstances that currently justify the retention of this restriction.

**24.2.** In assessing whether the retention of the restriction on fundamental rights included in the contested norm after 2010 has a reasonable justification, both the democratic development of the state and the external threats to the national security must be taken into account. One of the factors which until 2010 justified the retention of this restriction was Russia’s aggression in Georgia (see the minutes and the audio-recording of the meeting of the Legal Commission of the 9<sup>th</sup> Saeima on 20 January 2009, the case materials, vol. 1, pp. 123–129). As noted by the Security Police and the Constitution Protection Bureau, with Russia’s aggression in Ukraine the political situation in the region has deteriorated and this factor has a direct impact on the national security (see the case materials, vol. 2, pp. 82–85). It is noted in Annual Report 2016 of the Constitution Protection Bureau: “The most significant threats to security are

created by Russia – its aggression in Ukraine, the demonstration of military power and provocations in the direct vicinity of NATO’s external borders, elements of informative war and hybrid war directed against the neighbouring states” (see: *The Constitution Protection Bureau’s Annual Report 2016*). The conclusion that the most essential threat to Latvia’s national security is caused by Russia’s aggressive foreign policy is made also in the 2017 Annual Report of the Constitution Protection Bureau (see: *see: The Constitution Protection Bureau’s Annual Report 2017*). As regards internal threats, the Security Police underscores that it has repeatedly noted in its annual reports that persons who previously had been active in the organisations referred to in the contested norm are expressing opinions contrary to the national security and interests and engage in actions directed against them (see *the case materials, vol. 2, p. 84*).

The Constitutional Court notes that in the context of the democratic development of the state of Latvia these external and internal threats are a significant factor that justifies retention of the restriction.

**24.3.** The contested norm is not directed against the pluralism of ideas in Latvia or the political views of a certain person but rather against persons who by their actions imperilled and continue to imperil the national independence of Latvia and the principles of democratic state governed by the rule of law (see, for example, *the judgment of the European Court of Human Rights of 1 June 2015 in the case “Petropavlovskis v. Latvia”, application no. 44230/06, paras. 69–70*). Also, it should be taken into account that the contested norm does not prohibit person to whom the prohibition included therein applies from being actively engaged in political parties and public organisations.

Moreover, the restriction on a person’s rights included in the contested norm is not arbitrary and is sufficiently individualised. As found previously, the contested norm prohibits form standing at the *Saeima* elections a person who after 13 January 1991 has been active in the Communist Party of the Soviet Union (the CPL), Working People’s International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees and by her actions imperilled and continues to imperil the independence of the state of Latvia and the principles of a democratic state governed by the rule of law.

Pursuant to Articles 13(2)(6) and 13(3)(6) of the *Saeima* Election Law the Central Election Commission deletes the person to whom the contested norm applies from the list of proposed candidates. In accordance with Article 13<sup>1</sup>(1) of

this law, the decision of the Central Election Commission to delete the proposed candidate from the registered list of candidates can be appealed against within three business days following the adoption of the respective decision. Article 54 of the *Saeima* Election Law provides that an application is to be submitted to the Administrative Regional Court which examines the case as a first-instance court and adopts a ruling within seven days following the receipt thereof.

Thus, the *Saeima* Election Law comprises a mechanism that allows for an individual assessment of each case and verification whether the prohibition to stand for the *Saeima* elections is applicable to a person. The Constitutional Court already has recognised that the Central Election Commission, rather than being a bureau that performs technical work or an intermediary institution, is the highest managing institution, which must strictly ensure that all laws applicable to the *Saeima* elections were correctly applied and enforced (*see the decision of the Constitutional Court on terminating legal proceedings of 19 December 2010 in the case no. 2012-03-01, para. 19.3*). When screening the proposed candidate, the Central Election Commission must ascertain not only whether a person's active involvement in the organisations referred to in the contested norm has been established by a judgment of a court but also whether the person by her actions continues to imperil the national independence of Latvia and the principles of a democratic state governed by the rule of law. To verify this, the Central Election Commission, pursuant to Article 11 of the law "On Central Election Commission", has the right to request information from the officials of state and local government institutions or to summon them to its meetings.

**24.4.** The Constitutional Court finds that the public benefit from the restriction included in the contested norm in a state where, in view of its democratic development and the general situation in Europe, the democratic order, i.e., the integrity of its constitutional bodies requires protection outweighs the adverse consequences that are caused to a person who by her actions imperils the national independence and the principles of a democratic state governed by the rule of law, by the restriction on her fundamental rights. It should be taken into account that, if at any time it is established that the political situation in the state has changed or the foreign policy threats have diminished, the legislator has an obligation to review the restriction included in the contested norm and decide up on amendments to the *Saeima* Election Law.

**Thus, the restriction complies with the principle of proportionality and, consequently, the contested norm, if properly interpreted, complies with Articles 1 and 9 of the *Satversme*.**

25. The Applicant also alleges that the legislator, in establishing the procedure in which a person's right to stand for the *Saeima* elections are to be exercised, has not complied with the equality principle.

Although the Applicant has requested a review of the contested norm's compatibility with the entire Article 91 of the *Satversme*, it follows from the constitutional complaint that only the compliance of the contested norm with the first sentence of Article 91 of the *Satversme* which provides that that all people in Latvia are equal before the law and court is contested.

The principle of equality enshrined in the first sentence of Article 91 of the *Satversme* must guarantee the existence of a unified legal order. Its task is to ensure the implementation of a comprehensive impact of law upon all persons and application of law without any privileges whatsoever which is required of a state governed by the rule of law. This also guarantees a full effect of law and objectiveness and passionlessness of law, and also that no one is allowed to ignore the precepts of law (*see the judgment of the Constitutional Court of 14 September 2005 in the case no. 2005-02-0106, para. 9.1*). However, such a uniformity of legal order does not mean levelling downwards because "equality allows differential approach if it is justifiable in a democratic society (*see the judgment of the Constitutional Court of 26 June 2001 in the case no. 2001-02-0106, para. 4 of the motives part*).

The Constitutional Court when interpreting Article 91 of the *Satversme* has recognised that the principle of equality prohibits state institutions from adopting norms that without reasonable grounds allow for a differential treatment of persons who are in similar and according to certain criteria comparable circumstances. The principle of equality allows and even demands differential treatment of persons who are in different circumstances, as well as allows differential treatment of persons who are in similar circumstances if there are objective and reasonable grounds for it (*see, for example, the judgment of the Constitutional Court of 3 April 2001 in the case no. 2000-07-0409, para. 1 of the motives part, and the judgment of 11 November 2005 in the case no. 2005-08-01, para. 5*). Differential treatment lacks objective and reasonable grounds if it does not have a legitimate aim or if the relationship between the chosen measures and

the advanced aims are not proportional (*see the judgment of the Constitutional Court of 23 December 2002 in the case no. 2002-15-01, para. 3 of the motives part*).

Hence, to assess whether the contested norm complies with the equality principle included in the first sentence of Article 91 of the *Satversme*, it must be established:

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

2) whether the contested norm envisages similar or differential treatment of these persons;

3) whether this treatment has objective and reasonable grounds; i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, the judgment of the Constitutional Court of 12 February 2015 in the case no. 2014-08-03, para. 12, and the decision on terminating the legal proceedings of 6 April 2017 in the case no. 2016-10-01, para. 13*).

**25.1.** In assessing a possible violation of the equality principle enshrined in the first sentence of Article 91 of the *Satversme* the Constitutional Court must first verify whether and which groups of persons are in similar and comparable circumstances.

The Applicant alleges that citizens who have been active in the CPL are in similar and comparable circumstances with other citizens of Latvia. Hence, these persons should be treated equally (*see the case materials, vol. 1, p. 7*).

The *Saeima*, however, notes that various restrictions on the right to stand for elections have been set also for other citizens of Latvia. Moreover, the restriction established in the contested norm does not apply to all the former members of the CPL but only to those persons, who have been active in the CPL after 13 January 1991. Thus, the groups of persons indicated by the Applicant are not comparable within the meaning of the first sentence of Article 91 of the *Satversme*. The *Saeima* considers that those persons whose activities in the CPL after 13 January 1991 have been established by a judgment of a court and those citizens of Latvia to whom neither this nor any other restrictions established by the *Satversme* and the *Saeima* Election Law apply are in similar and comparable circumstances (*see the case materials, vol. 1, pp. 31–32*).

The Constitutional Court has already noted that two situations are never totally identical. A situation which shares one or several features with the

situation to be examined should be chosen for comparison (*see, for example, the judgment of the Constitutional Court of 4 January 2007 in the case no. 2006-13-0103, para. 7*). In examining whether the principle of equal treatment is complied with, the decisive consideration is whether several persons are united by one essential feature that they have. To establish whether and which persons are in similar and comparable circumstances, the main feature that these persons share needs to be established (*see, for example, the judgment of the Constitutional Court of 23 November 2015 in the case no. 2015-10-01, para. 17*).

Article 4 of the *Saeima* Election Law provides that any citizen of Latvia who on the election day is older than 21 years may be elected to the *Saeima*, unless any restrictions referred to in Article 5 of this law apply to him. The contested norm includes one of the restrictions defined in the *Saeima* Election Law which prohibits a citizen of Latvia who on the election day is older than 21 years to stand for the *Saeima* elections. It follows from the above that citizenship is the most essential feature that the groups of persons share.

**25.2.** However, one common feature in itself not always can serve as a sufficient argument for establishing that persons are in similar and mutually comparable circumstances. The Constitutional Court must also examine whether significant considerations do not exist that would prove that persons are not in similar and comparable circumstances (*see, for example, the decision of the Constitutional Court on terminating the legal proceedings of 6 April 2017 in the case no. 2016-10-01, para. 16*).

Therefore, the Constitutional Court, when examining the compliance of a legal norm with the equality principle included in Article 91 of the *Satversme*, should establish not only the existence of a common feature but also whether the circumstances of the persons are indeed similar and comparable.

The Constitutional Court has found that the contested norm does not envisage differential treatment depending on a person's political conviction (views) but rather a restriction on electoral right linked to activities directed against the restored democratic order (*compare: the judgment of the Constitutional Court of 30 August 2000 in the case no. 2000-03-01, para. 4 of the motives part*). By the contested norm the legislator has restricted the right to stand for the *Saeima* elections of those citizens who, by being active after 13 January 1991 in the organisations referred to in the contested norm by their actions imperilled in continue to imperil the national independence of Latvia and the principles of a democratic state governed by the rule of law. Those citizens of

Latvia to whom the restriction included in the contested norm apply and those citizens of Latvia to whom neither this restriction on election rights nor other restrictions envisaged in the *Satversme* and the *Saeima* Election Law apply are in different and mutually incomparable circumstances. The legislator's obligation to envisage an equal treatment of persons who are in different and mutually incomparable circumstances does not follow from the first sentence of Article 91 of the *Satversme*.

**Since persons are not in similar and mutually comparable circumstances, the contested norm complies with the first sentence of Article 91 of the *Satversme*.**

### **Resolutive Part**

On the basis of Articles 30-32 of the Constitutional Court Law, the Constitutional Court

#### **decided:**

**to recognise Article 5(6) of the *Saeima* Election Law as being compatible with Articles 1, 9, and 91 of the *Satversme* of the Republic of Latvia.**

The judgment is final and not subject to appeal.

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

Chairperson of the hearing of the Court

I. Ziemele