THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, June 15, 2006

JUDGMENT
in the name of the Republic of Latvia

in matter No. 2005-13-0106

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš and the justices Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse

on the basis of the claim by twenty deputies of the 8th. Saeima – Aleksandrs Golubovs, Martijans Bekasovs, Sergejs Fjodorovs, Igors Solovjovs, Vladimirs Buzajevs, Nikolajs Kabanovs, Jakovs Pliners, Andris Tolmačovs, Andrejs Aleksejevs, Juris Sokolovskis, Oļegs Deņisovs, Jānis Jurkāns, Andrejs Klementjevs, Valērijs Agešins, Ivans Ribakovs, Aleksandrs Bartaševičs, Aleksejs Vidavskis, Vitālijs Orlovs, Jānis Urbanovičs and Boriss Cilēvičs

as well as on the basis of the constitutional complaint by Juris Bojārs

under Section 85 of the Republic of Latvia Satversme (Constitution) as well as Sections 16 (Items 1 and 6), 17 (Items 3 and 11 of the first Paragraph), 192 and 281

in written proceedings at May 16, 2006 Court session reviewed the matter

"**On the Compliance of Section 5 (Items 5 and 6) of the Saeima (Parliament) Election Law and Section 9 (Items 5 and 6 of the first Paragraph) of the City Dome, District Council and Rural District Council Election Law with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme (Constitution) as well as with Sections 25 and 26 of the International Covenant on Civil and Political Rights".**

The establishing part

1. On May 25, 1995 the Republic of Latvia Saeima (hereinafter – the Saeima) passed the Saeima Election Law, which took effect on June 6, 1995. Section 5 (Items 5 and 6) of this Law determines:

”Persons are not to be included in the candidate lists and are not eligible to the Saeima if they: […]

5) belong or have belonged to the regular staff of the USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services;

6) after January 13, 1991 have been active in CPSU (CP of Latvia), Working People’s International Front of the Latvian SSR, the United Board of Working Bodies; Organization of War and Labour Veterans; All-Latvia Salvation Committee or its regional committees.”

On January 13, 1994 the Saeima passed the City Dome, District Council and Rural District Council Election Law, Section 9 (Item 4) of which determined:

”The following persons shall not be nominated as candidates for the Dome (Council) election and shall not be elected to the Dome (Councils):

4) persons, who are or have been regular staff or contracted employees of the former USSR or Latvia SSR State Security Committee, the USSR Ministry of Defense, the Security Service, Army, the intelligence or counterintelligence services of Russia and other states, and the residents of these institutions or holders of apartments used for conspirate meetings.”

On November 6, 1996 the Saeima amended Section 9 of the above Law and supplemented it with a new Item – Item 5 and hereinafter Section 9 (Items 5 and 6) of the City Dome, District Council and Rural District Council Election Law was in effect in the following wording:

” The following persons shall not be nominated as candidates for the Dome (Council) election and shall not be elected to the Dome (Councils): […]
5) persons who after 13 January 1991 have been active in the CPSU (LCP), the Working People’s International Front of the Latvian SSR, the United Council of Working Collectives, the Organization of War and Labour veterans, the All- Latvian Salvation Committee or its regional committees;

6) persons who are or have been regular staff or contracted employees of the former USSR or the Latvian SSR KGB, the USSR Ministry of Defense, the Security Service of Russia and other countries, the reconnaissance or counterintelligence service or the residents of the above institutions and the holders of apartments used for secret meetings."

On December 6, 1996 the Saeima adopted the Law by which was changed the name of the City Dome, District Council and Rural District Council Election Law, expressing it in the following wording: "City Dome and Rural District Council Election Law".

On April 4, 2000 the Saeima adopted the Law "Amendments to the City Dome and Rural District Council Law", which took effect on May 4, 2000. By it the name of it was expressed in a new wording – "City Dome, Region Dome and Rural District Council Election Law" (hereinafter – Local Government Election Law), besides Item 6 of Section 9 was also expressed in a new wording:

" The following persons shall not be nominated as candidates for the Dome (Council) election and shall not be elected to the Dome (Councils): […]

6) persons who are or have been staff employees of the former USSR, Latvian SSR or foreign country Security Services, intelligence or counterintelligence service."

2. By the Supreme Council May 4, 1990 Declaration " On the Accession of the Republic of Latvia to International Instruments Relating to Human Rights" Latvia acceded to several international documents, also to the International Covenant on Civil and Political Rights (hereinafter – the Covenant). In Latvia the Covenant is in effect as of July 14, 1992. Section 25 of the Covenant establishes:

" Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Section 2 and without unreasonable restrictions:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) to vote and to be elected at genuine periodic elections, which shall be by universal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) to have access, on general terms of equality, to public service in this country.

Paragraph 1 of Section 2 of the Covenant establishes that:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

In its turn Section 26 of the Covenant determines that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

3. Sections 1 and 9 of the Republic of Latvia Satversme (hereinafter – the Satversme) are in effect in the wording, in which the Constitutional Assembly adopted it on February 15, 1922. Section 1 of the Satversme states: ” Latvia is an independent democratic republic”. In its turn Section 9 envisages: ” 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”.

On October 15, 1998 the Saeima supplemented the Satversme with Chapter VIII ”Fundamental Human Rights”, which took effect on November 8, 1998. Section 91, which is included in this Chapter, determines: ”All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind.”

In its turn Section 101 of the Satversme initially was in effect in the following wording: ” Every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government, and to hold a position in the civil service”.

4. On August 15, 2000 the Constitutional Court in a public hearing reviewed case No. 2000-03-01 ” On Compliance of Section 5 (Items 5 and 6) of the Saeima Election Law and Section 9 (Items 5 and 6) of the City Dome, Region Dome and Rural Council Election Law with Sections 89 and 101 of the Satversme (Constitution), Section 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Section 25 of the International Covenant on Civil and Political Rights”. The case was initiated on the basis of the claim by twenty three deputies of the 7th. Saeima.

On August 30, 2000 the Constitutional Court announced the Judgment in this case, ruling that Items 5 and 6 of Article 5 of the Saeima Election Law and Items 5 and 6 of the City Dome, Region Dome and Rural Council Election Law comply with Articles 89 and 101 of the Satversme, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the First Protocol of this Convention as well as Article 25 of the International Covenant on Civil and Political Rights.

5. By April 30, 2002 Law ”Amendments to the Republic of Latvia Satversme”, Section 101 of the Satversme was expressed in the following wording:

” Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and local government, and to hold a position in the civil service.

Local governments shall be elected by full-fledged citizens of Latvia. The working language of local governments is the Latvian language.”

On September 23, 2004 the Saeima adopted the Law ”Amendments to the Republic of Latvia Satversme”, which altered the second Paragraph of Section 101 of the Satversme, expressing it in the following wording:

” Local governments shall be elected by Latvian citizens and citizens of the European Union, who permanently reside in Latvia. Every citizen of the European Union, who permanently resides in Latvia, has the right, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language”.

6. At the time of announcing the Constitutional Court August 30, 2000 Judgment , Section 17 of the Law ” On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts about Persons’ Collaboration with the State Security Committee (hereinafter – KGB Documentation Law) determined that ” after 10 years from the date of this Law taking effect, statement of the fact of collaboration with the KGB under the procedure established by Sections 14 and 15 of this Law shall not be permitted, and his/her possible collaboration with the KGB shall not be used in legal relations against this person”.

On May 27, 2004 the Law ”Amendments to the Law ”On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts about Persons’ Collaboration with the KGB”” was passed. By this Law Section 17 of the KGB Documentation Law was modified and expressed in the following wording: ” After 20 years from

the date of this Law taking effect, statement of the fact of collaboration with the KGB under the procedure established by Sections 14 and 15 of this Law shall not be used in legal relations against these persons". With a respective amendment the Transitional Provisions of the KGB Documentation Law were supplemented as well, namely:

"Up to June 1, 2005 the Cabinet of Ministers shall assess the necessity and validity of the restrictions determined to the KGB staff and contracted employees as well as the KGB informants. The Cabinet of Ministers shall submit the assessment of the restrictions, determined in the above laws, to the Saeima."

Twenty deputies of the 8th. Saeima submitted the claim on the conformity of the above Amendments with the legal norms of higher legal force to the Constitutional Court. On March 22, 2005 the Constitutional Court announced Judgment in the matter No. 2004-13-0106 " On the Compliance of May 27, 2004 Law "Amendments to the Law "On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts about Persons' Collaboration with the State Security Committee"" with Section 101 of the Republic of Latvia Satversme (Constitution), Section 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with Section 3 of its First Protocol"", which was initiated on the basis of the above claim.

In the Judgment the Constitutional Court inter alia established that the submitter of the claim had not contested any of the specific laws and had only implied to unconformity of the impugned norm with the right to be elected and with the right of holding certain positions (besides- only some positions) as well as the right to carry out duties in the State service. However, to establish whether every concrete restriction complies with the Satversme and the Convention, one shall assess the norms of the particular specific laws, that is, cases on the compliance of other laws, but not the impugned norms with the Satversme shall be reviewed (*sk. Satversmes tiesas 2005.gada 22. marta sprieduma lietā No. 2004-13-0106 25.1. punktu; see the Constitutional Court March 22, 2005 Judgment in case No. 2004-13-0106; Item 25.1).* The Constitutional Court ruled that the contested Law complied with Section 101 of the Satversme, Section 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Section 3 of its First Protocol.

7. On April 1, 2005 twenty deputies of the 8th. Saeima submitted a claim on the compliance of Section 5 (Items 5 and 6) of the Saeima Election Law (hereinafter – the contested Saeima Election Law norms) and Section 9 (Items 5 and 6 of the first Paragraph) of the Local Government

Election Law (hereinafter – the contested norms of the Local Government Election Law) with several norms of higher legal force. A matter on the compliance of the contested norms with Sections 1, 91 and 101 of the Satversme and Sections 25 and 26 of the Covenant was initiated.

On December 8, 2005 Juris Bojārs submitted a constitutional complaint. On the basis of the complaint a matter was initiated on the conformity of Section 5 (Item 5) with Sections 1, 91 and 101 of the Satversme and Sections 25 and 26 of the Covenant.

By the decision of the Constitutional Court organizational session both the above matters were united into one. The following claims follow from the constitutional complaint and the application by the Saeima deputies:

1) on the compliance of Section 5 (Item 5) of the Saeima Election Law with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme and Sections 25 and 26 of the International Covenant on Civil and Political Rights;
2) on the conformity of Section 5 (Item 6) of the Saeima Election Law with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme and Sections 25 and 26 of the International Covenant on Civil and Political Rights;
3) on the compliance of Section 9 (Item 5 of the first Paragraph) of the Local Government Election Law with Sections 1, 91 and 101 of the Republic of Latvia Satversme and Sections 25 and 26 of the International Covenant on Civil and Political Rights;
4) on the conformity of Section 9 (Item 6 of the first Paragraph) with Sections 1, 91 and 101 of the Republic of Latvia Satversme and Sections 25 and 26 of the International Covenant on Civil and Political Rights.

It is requested in the claim by the Saeima deputies to declare the contested norms as null and void from the moment of their adoption. In the constitutional complaint it is requested to declare that the impugned norm is not in effect. Thus one may presume that the submitter of the constitutional complaint requests the Constitutional Court to declare the impugned norm as invalid as of the date determined in Section 32 of the Constitutional Court Law, namely, from the day of publication of the Judgment.

8. **The Saeima deputies** (hereinafter – the submitter of the claim) stress that when interpreting the norms, incorporated into Chapter VIII of the Satversme, they shall not be contradistinguished to the democratic values, fixed in the I Chapter of the Satversme, inter alia also to the

notion of democratic republic, included in Section 1 of the Satversme as well as the legal principles, following from it.

In the claim is expressed the viewpoint that the restrictions of fundamental rights, included in the impugned norms do not comply with the norms of the Satversme and international human rights norms, as they have not been determined with a legitimate aim and are not needed in a democratic society. The submitter holds that necessity for restrictions in a democratic society is determined by both – the existence of an immediate public need and suitability, necessity and urgency of the respective restriction for realization of public needs. To the mind of the submitter in the conditions, when Latvia is not only a full-fledged NATO member, European Council and EDSO Member State, but has also joined the European Union and NATO, its is ungrounded to hold that the democratic structure, national and territorial integrity in Latvia is endangered to such an extent so as to justify the restrictions.

The submitter of the claim points out that traits of collective responsibility may be seen in the impugned norm, as it in fact establishes restrictions on the basis of belonging to the above organizations and not on the basis of nature of the activity of every person. Besides, in the practice of Latvia jurisdiction the term ”to act” is interpreted so that it is enough to establish formal membership in this or that organization to prohibit persons run for elections.

Making reference to Resolution No. 1096 (1996) of the Parliamentary Assembly of the European Council ”On Measures to Dismantle the Heritage of Former Communist Totalitarian Systems” the submitter in the claim stresses that ”when dismantling the heritage of former communist totalitarian system the procedure of a democratic state shall be applied. Other measures will not do as then the state structure will not be better than the totalitarian regime, which it is necessary to dismantle”.

In its turn, making reference to Document No. 7568 by the Parliamentary Assembly of the European Council Committee of Legal Affairs and Human Rights ”On Guaranteeing Lustration Laws and Administrative Measures Conformable with the Requirements of a Law-governed State”, it is stated in the claim that ”lustration shall not be attributed to elected institutions, unless the candidate himself/herself does not require it; because the voters have the right of electing persons, they want to elect (only a convicted person may by the resolution of the court be deprived of election rights – it is not an administrative but a criminal measure)”.

The submitter of the claim holds that the impugned norms permit discrimination on the ground of political membership, which is at variance both with Section 1 of the Satversme and Section 26 of the Covenant. In the claim the submitter mentions also the commentaries of the UNO Human Rights High Commissioner, which have been accepted on November 10, 1989 at the 37th. session of the UNO Human Rights and in which the viewpoint of the UNO Human Rights Committee is expressed, namely, " The term "discrimination", used in the Covenant shall be attributed to every distinction, exception, restriction or advantage, which is connected with race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and the aim or result of which is prohibition or worsening of recognition, enjoyment or realization of any rights or freedoms for any of persons, who are in equal conditions."

A viewpoint is expressed in the claim that – non-inclusion of restrictions, analogous to the impugned restrictions, in the European Parliament Election Law – legal motivation to maintain these restrictions in the Latvian Local Government and the Saeima (Parliament) Election Laws loses significance.

9. **Juris Bojārs** (hereinafter also – the submitter of the constitutional complaint) in his constitutional complaint points out that Section 5, Item 5 of the Saeima Election Law and the requirements of the KGB Documentation Law deny to the submitter of the constitutional claim passive election rights and are not conformable with the Satversme and several international instruments, binding on the Republic of Latvia, which are mentioned in the constitutional complaint.

   As concerns actual circumstances of the matter, it is stated in the constitutional complaint that the submitter already for more than ten years groundlessly experiences restrictions of a significant for a human being fundamental right and is not able to use his right to be a deputy candidate for the Saeima elections, even though he "not only has not done anything wrong to the Republic of Latvia, but – quite to the contrary – has been awarded for his achievements in the process of renewal of independence in Latvia" (*lietas materiālu 2. sējums, 98.lpp; Volume II, p. 98 of the materials in the matter).* Namely, J.Bojārs has been awarded with the Order of Three Stars.

   J.Bojārs requests the Constitutional Court to declare that the prohibition, determined in Section 5, Item 5 of the Saeima Election Law "to announce as deputy candidates and to elect to the Saeima shall not refer to the former staff employees of the State Security Committee by the Council of Ministers of the LSSR, who:

(1) have terminated their activities in the above institution before May 4, 1990 and
(2) have publicly till May 4, 1990 informed about their work in LSSR KGB or
(3) have never made a secret of the work in KGB and
(4) during the activities in KGB have not done anything wrong to the State of Latvia and its nation, the opposite of which shall be proved in the court or
(5) have been the deputies of the Latvian SSR Supreme Council and on May 4, 1990 have voted for the independence of the Republic of Latvia or, by taking into consideration (4)
(6) have been decorated with the Republic of Latvia highest awards for efficient activities in regaining of the independence (*lietas materiālu 2. sējums, 128.lpp.; Volume 2, p. 128 of the materials in the matter).*

In its turn, if the above solution is impossible, the submitter of the constitutional complaint requests the Constitutional Court to declare Section 5, Item 5 of the Saeima Election Law as null and void in the connection with the fact that it is unconformable with the legal norms of the Satversme and international instruments, mentioned in the complaint.

It is concluded in the decision of the Constitutional Court Panel No. 1 that – in compliance with Section 16 of the Constitutional Court Law – it is not within the authority of the Constitutional Court to express the impugned norm in the wording, which would determine the range of persons, whom the impugned norm does not concern. Thus, the matter was initiated only on the above claim in the part, which refers to conformity of the impugned norm with the Satversme and international human rights instruments.

As concerns the above claim it is pointed out in the constitutional complaint that the impugned restriction is at variance with the principle of freedom of elections. The voter is not completely free to choose a desirable to him candidate but a candidate from the list, which has been censored by the state and its bureaucrats.

The submitter of the constitutional complaint stresses that Section 5, Item 5 of the Saeima Election Law is at variance with Section 9 of the Satversme, which determines that ” any citizen, who enjoys full rights of citizenship may be elected to the Saeima”. Not objecting to the possibility of restricting election rights to persons of certain categories, who seriously and really endanger national security, independence and the democratic structure of the State of the Republic of Latvia, the submitter of the constitutional complaint holds that the restrictions, determined in Section 5, Item 5 of the Saeima Election Law, do not

comply with the spirit of the Satversme. To his mind they are ungrounded and unfair with regard to the submitter of the constitutional complaint, they are not proportionate and reasonable in the present international status of Latvia, from which follows no real endangerment to the independence of Latvia and international security.

The submitter of the constitutional complaint reminds that once at the meeting of the Constitutional Assembly Arveds Bergs has remarked that ”any citizen of Latvia, who enjoys full rights of citizenship, has election rights, that is the principle and it may have only some exceptions. And on the basis of it one may not strongly restrict this election rights by introducing other restrictions. It would not be in the spirit of Constitution and no Saeima would want to violate the spirit of the Satversme” (*Latvijas Satversmes Sapulces stenogrammas, Rīga, 1921., 17. burtnIca, 1576 lpp.; Verbatim report of the Latvian Constitutional Assembly meeting, Vol. 17, Riga, 1921, p. 1576).* Besides in the Constitutional Court August 30, 2000 Judgment it is recognized that ” restrictions of the right to vote as exceptions from the principle shall be interpreted in the narrow sense”(*Satversmes tiesas 2000 30. augusta sprieduma lietā No. 2000-03-01 secinājumu daļas 1. punkts; the Constitutional Court August 30, 2000 Judgment in case No.2000-o3-01; Item 1 of the concluding part).* However, disproportionately wide restrictions are declared as admissible in the Judgment. The submitter of the constitutional complaint stresses that the contested restrictions to the election rights are so extensive that the essence of the right is deprived to the submitter.

In the constitutional complaint are analyzed several arguments, expressed by the Saeima representative during the process of review of case No. 2000-03-01. In the case law there are no real cover and proof to the statement of the Saeima representative that crossing out candidates from the candidate list does not take place as the result of administrative arbitrariness, but on the basis of individual court decision. Establishment of the fact of collaboration by the Latvian courts has always proved to be ineffective. Besides, the law does not solve the issue on the activities in case if there has been no court process, because there has been no necessity for it. Namely, in case if the candidate does not conceal the fact, that in past he/she has worked in the State Security Committee.

The argument of the Saeima representative, that the former and present employees of the security institutions, who have not openly declared the fact, are still subject to blackmail, cannot be attributed to the submitter of the constitutional complaint either. J.Bojārs has never concealed his previous activities in the State Security Committee.

It is stressed in the constitutional complaint that the employees of the Latvian Communist Party (LCP) have been the actual representatives of the occupational power; however, in difference from the submitter of the constitutional complaint, no restrictions have been determined to them.

It is stressed in the constitutional complaint that the Constitutional Court, while declaring in its August 30, 2000 Judgment that the impugned restrictions are conformable with the Satversme, has pointed out that they shall not be termless. However, it follows from the Saeima Election Law, that they have been determined ”for ever”. Section 17 of the KGB Documentation Law does not give an unequivocal answer to this issue, as in no place it is clearly stated that the restrictions of the rights shall be abrogated.

The submitter points out that the Nuremberg principle – first of all to turn against the former leaders of the criminal system – has not been observed in Latvia as the restriction of rights has taken place, by not envisaging responsibility for the former LCP nomenclature employees.

The viewpoint is expressed in the constitutional complaint that the submitter of it suffers from discrimination after ”33 year old employment feature” (*lietas materiālu 2. sējums, 114 lpp.; Volume II, p. 114 of the materials in the matter).* J.Bojārs points out that it is unfair and discriminating that persons, who in their time – being the members of the Working People’s International Front – at the Republic of Latvia Supreme Council voted against the independence in Latvia, as well as others, who are outright against Latvian independence and abet its policy are able to stand for elections; but it is not allowed to the submitter of the constitutional complaint, who voted for the independence in Latvia, who has not done anything wrong against Latvia and who has been awarded with the highest State Order for his achievements in the process of Latvia regaining the independence.

The submitter of the constitutional complaint holds that his case is specific and in this or that way had to be established by the law. Namely, the person, which during the time of his/her employment in the State Security Committee has not in any way committed an offence against the State of Latvia and does not create real endangerment to it, shall be treated differently as the other former KGB employees. Making reference to the European Court of Human Rights (hereinafter – ECHR) 2001 Judgment in case ” Jane Smith v. the United Kingdom [GC], [2001] ECHR 45, it is pointed out that discrimination may appear even then, if the state – without an impartial and reasonable justification does not differently treat persons, whose situations are noteworthy different.

9. **The Saeima** in its written replies requests to reject the claim of the deputies and the constitutional complaint of J.Bojārs, at the same time recognizing the impugned norms as conformable with Sections 1, 9, 91 and 101 of the Satversme as well as Sections 25 and 26 of the Covenant. The Saeima stresses that – as concerns basic viewpoints – its position remains the same as it has been in case No. 2000-03-01.

   In addition to the conclusions, which have been already expressed the Saeima draws the attention to the common historical and political context in the former USSR territory at the end of 1990 and the beginning of 1991. The events of those days in Latvia shall be dealt with by taking into consideration the tragic events, which took place also in other places, for example, in Lithuania, were 14 people were killed. The Saeima holds that in the claim of the deputies it is groundlessly stated that in 1991 and 1992 all the criminal cases in the part on the activists and leaders of the banned public and publicly-political organizations have been terminated in accordance with the requirements of Section 5, Item 2 of the Criminal Procedure Law, as no constituent elements of a criminal offence has been established in the activities of these persons. This statement creates an evidently incomplete and false view about the real situation. In reality some persons (A.Rubiks and O.Potreki) were convicted.

   It is stressed in the written reply that January of 1991 has actually become the border point, when people of Latvia made their choice about which side of the barricades to stand on. One party protected democracy and independence of Latvia. In their turn those, who tried by different means to break it and succeed in returning the former regime, could not misunderstand the consequences of their activities.

   The Saeima holds that Section 1, 9 and 101 of the Satversme shall be interpreted as read together. To their mind from Section 101 of the Satversme it can be clearly seen that the right to participate in the work of the State and of local governments are not absolute but include the provision ”as provided for by law”. Thus, the Satversme envisages that the kind of use of this right shall be determined by the law. The Saeima Election Law and the Local Governments Election Law are such laws.

   By referring to the practice of ECHR, the written reply expresses the viewpoint that the right to stand for elections is not absolute, but may be subjected to restrictions, with the provision that the restrictions do not violate the essence of the right, have a legitimate aim and that the measures are not disproportionate (*see: Mathieu –Mohin at Clerfayt v. Belgium, [1987] ECHR 1).* Well-grounded restrictions are permitted; besides, one has to take into consideration that not all restrictions are discriminative.

The Saeima points out that the aim of the concrete restrictions of the election rights is to protect the democratic structure of the State, national security and integrity of the territory of Latvia. Prohibition to become the Saeima and local government deputies to the employees of foreign state, also the USSR occupational power, former and present security service, intelligence and counter-intelligence services follows from the national security interests of Latvia as an independent State. That refers not only to the present but also to the former staff employees of the above institutions, who have not publicly declared their activities in the institutions. The second aim of such prohibition is connected with the needed in a democratic state public confidence in the political representatives of the state (in this case - Latvia).

As regards the issues on whether the impugned restrictions are necessary in a democratic society, the Saeima stresses that the impugned restrictions of the election rights were necessary in 2000 and are necessary also at the moment of preparing the written reply.

In the written replies a viewpoint is expressed that the impugned restrictions of the election rights shall be assessed in the context of the State political development, namely, in the situation, when – after 50 years of depressing totalitarian regime and occupation of the State – potential repetition of the tragic history has to be averted.

The Saeima recognizes that restrictions shall not be eternal and points out that neither the Saeima Election Law nor the Local Governments Election Law or any other law determine that these restrictions will last for ever. Discussions on the justification of the restriction of the concrete Election Law always appear when Amendments to the Saeima Election Law or the Local Government Election Law are being reviewed in the Saeima.

It is stressed in the written reply that mechanical determination of the term is impossible and additional provisions are needed for rejection of such restrictions. The Saeima agrees with the viewpoint expressed by the justice of the European Court of Human Rights E. Levits in his dissenting opinion that ” only an intensive public discussion and policy, organized by the State, the aim of which is to redeem injustice… may permanently conciliate the society and achieve stabilization of the democratic structure”” [*ECT Pirmā departamenta spriedums lietā ”Tatjana Ždanoka pret Latviju”; the Judgment of the ECHR First Department in case ”Tatjana Ždanoka v. Latvia”// Latvijas Vēstnesis No 11 (3059) 15.07.2004]*.

The Saeima points out that the content of Section 91 of the Satversme includes norms about the prohibition of discrimination, which is

determined also in Section 26 of the Covenant. Thus the compliance of the impugned norms with Section 26 of the Covenant shall be analyzed in conformity with Section 91 of the Satversme.

It is asserted in the written reply that the impugned restrictions refer to election rights on their merit and they are not discriminating when realized.

In the written reply, referring to the case, initiated on the basis of the constitutional complaint, additionally to the above is stated that in the constitutional complaint by J.Bojārs are included controversial and connected with a provision viewpoints, as well as several unproved statements, for example, about his activities in the State Security Committee, his achievements in the process of the renewal of the independence. None of the statements of the submitter of the constitutional complaint has been examined and proved under the procedure provided for by law. Real collaboration of any person with the intelligence service of any state cannot be assessed on the basis of the entry in the service book. Connection of a person with the similar institution and the nature of this collaboration need a much deeper estimate.

The concluding part

10. The compliance of restriction under constant review with the Satversme is repeatedly contested at the Constitutional Court. On August 30, 2000 the Constitutional Court reached the Judgment in case No. 2000-03-01 ”On Compliance of Article 5 (Items 5 and 6) of the Saeima Election Law and Article 9 (Items 5 and 6) of the City Dome, Region Dome and Rural Council Election Law with Articles 89 and 101 of the Satversme (Constitution), Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 25 of the International Covenant on Civil and Political Rights” (hereinafter – the Constitutional Court August 30, 2000 Judgment).

When determining the range of issues to be reviewed in the matter to be repeatedly adjudged, one shall take into consideration the general principles of the Constitutional Court process. The Constitutional Court is authorized to express its viewpoint on legal issues only by adjudging matters initiated in accordance with the procedure provided for by law. The Constitutional Court is not authorized to initiate matters on the initiative of its own. Framework of a concrete matter shall be determined inter alia also by taking into consideration Section 20 (Paragraph 5, Item 4) of the Constitutional Court Law, which envisages that the Panel of the Constitutional Court is competent to refuse initiating a case if an application on an already reviewed claim has been

submitted. Simultaneously one shall take into consideration that Section 32 (the Second Paragraph) of the Constitutional Court Law establishes:"A judgment of the Constitutional Court shall be binding on all State and municipal institutions, offices and officials, including the courts, also natural and juridical persons". In every concrete case, when taking the decision on how far the Constitutional Court Judgment is binding on the Constitutional Court itself, one has to take into consideration also the principle of legal stability.

10.1. The Constitutional Court reviews matters by assessing circumstances, which exist at the moment of adjudication of the matter. In this concrete moment and under concrete circumstances the claim is an already adjudicated claim and initiating of a new matter shall not be permissible. However a judgment in a concrete case does not include changes, which may appear after the announcement of it. If the circumstances of the matter essentially change, the claim may not be any more considered as adjudicated.

The practice of the Constitutional Courts of other states shows that – if the circumstances of the matter change - the Constitutional Court may initiate a matter on the claim, which has already been adjudicated. Thus the German Federal Constitutional Court has repeatedly concluded that the mandatory nature of the judgment does not prohibit referring to new circumstances (*see: Bunderverfassungsgerichtsgesetz: Mitarbeiterkommentar und Hanbuch/hrsg. von Dieter C. Umbach und Thomas Clemens. Heidelberg: Müller, Jur. Verl.,1992, S. 545).* Also amendments (*see: BVerfGE 33, 1999 [204]*) and essential alterations in the interpretation of laws connected with changes of living conditions and public opinion (*see:BVerfGE 39, 169 [191])* shall be assessed as changes of such circumstances.

Thus the circumstance that a matter on the claim formulated in the application has been reviewed by the Constitutional Court in itself cannot serve as the grounds to refuse initiation of the matter. The Constitutional Court has to establish, whether in the concrete case there exist essentially new circumstances, under which the formulated claim cannot be considered as an adjudicated claim.

10.2. From May 27, 2004 Law "Amendments to the Law " On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts about Persons' Collaboration with the State Security Committee", essential new facts follow, namely, at the time of announcement of the Constitutional Court August 30, 2000 Judgment Section 17 of the KGB Documentation Law determined that "after 10 years from the date of this Law taking effect, statement of the fact of collaboration with the KGB under the procedure established by Articles 14 and 15 of this Law shall not be permitted and his/her possible collaboration with the KGB shall not be used in legal

relations against this person". The above Amendments to the KGB Documentation Law prolonged the above term to 20 years.

Simultaneously one has to take into consideration that in its August 30, 2000 Judgment the Constitutional Court determined that the proportionality of the restrictions, established in the impugned norms, has been assessed in the concrete circumstances of the moment of the announcement of the Judgment but has not been evaluated "forever". Quite to the contrary, the Constitutional Court has stressed that "the legislator, periodically evaluating the political situation in the State as well as the necessity and validity of the restrictions, should decide on determining the term of the restrictions in the impugned norms, as such restrictions to the passive election rights may last only for a certain period of time" (*Satversmes tiesas 2000. gada 30. augusta sprieduma lietā No. 2000-03-01 secinājumu daļas 7. punkts; the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 7 of the concluding part).*

10.3. After the announcement of the Constitutional Court August 30, 2000 Judgment Section 101 of the Satversme has been amended, in its turn it is requested in the claim to assess the conformity of the impugned norms also with such norms of the Satversme and international human rights norms on which the Constitutional Court in the concluding part of the above Judgment has not expressed its viewpoint.

Therefore, **the Constitutional Court, when preparing the Judgment, shall first of all assess how far the claim in the concrete matter is or is not "an adjudicated claim" in the understanding of Section 20 (Item 4 of the Fifth Paragraph) of the Constitutional Court Law.**

Besides, when taking the decision on the fact whether the concrete issue is "an adjudicated claim", one shall take into consideration not only the concluding part of the respective Judgment but also the conclusions taken and the development of the judicial system in the period after the announcement of the Judgment.

11. In the concluding part of its August 30, 2000 Judgment the Constitutional Court declared the impugned norms as conformable with Sections 89 and 101 of the Satversme, Section 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and Section 3 of the First Protocol to the Convention as well as with Section 25 of the Covenant. In its turn in the matter to be reviewed is contested the conformity of the norms with Sections 1, 9 and 101 of the Satversme as well as with Sections 25 and 26 of the Covenant.

11.1. During the time of announcement of August 30, 2000 Judgment Section 101 of the Satversme was in effect in the following wording: ”Every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government, and to hold a position in the civil service”.

Since the time of the Amendments taking effect, which were made under April 30, 2000 Law, the above text comprises the first Paragraph of the Section. The Section is supplemented with the second Paragraph, which by September 23, 2004 Law has been expressed in the following wording: ” Local governments shall be elected by Latvian citizens and citizens of the European Union, who permanently reside in Latvia. Every citizen of the European Union, who permanently resides in Latvia, has the right, as provided for by law, to participate in the work of local government. The working language of local governments is the Latvian language.”

The second part refers to the impugned norms of the Local Government Election Law; therefore, **the claim in the part of the compliance of these norms with Section 101 of the Satversme cannot be regarded as adjudicated.**

11.2. However the second Paragraph does not refer to the impugned norms of the Saeima Election Law. Only the conformity of Section 5 (Items 5 and 6) of the Saeima Election Law with the first Paragraph of Section 101 of the Satversme in this matter has been contested in essence; and that has not been amended after the announcement of the Constitutional Court August 30, 2000 Judgment.

11.3. In the operative part of the above Judgment neither Section 1 nor Section 9 of the Satversme were mentioned. However, in the concluding part of the Judgment the Constitutional Court has stressed that ” as concerns the impugned norms of the Saeima Election Law, Section 101 of the Satversme shall be interpreted as read together with Section 9 of the Satversme. The way of ensuring implementation of the right of a person to participate in the activities of the Saeima in case if a person strives to become the Saeima deputy, shall be in conformity with the provision expressed in Section 9 of the Satversme, namely, that ”any full-fledged Latvian citizen, who is over twenty one years of age on the first day of elections, may be elected to the Saeima”” *(Satversmes tiesas 2000.gada 30. augusta sprieduma lietāNo. 2000-03-01 secinājumu daļas 1. punkts; the Constitutional Court August 30, 2000 Judgment in case No 2000-03-01; Item 1 of the concluding part).*

In the same way the Constitutional Court has concluded that ” well-grounded restrictions of this kind are permissible only if they do not contradict the notion of democracy, mentioned in Section 1 of the Satversme” *(turpat, secinājumu daļas 1. punkts; the same source, Item 1 of the concluding part).*

Thus the claim on the conformity of the impugned Saeima Election Law norms with Sections 1 and 9 of the Satversme as well as with the first Paragraph of Section 101 has been adjudicated in the Constitutional Court August 30, 2000 Judgment. The claim on the compliance of the above norms with Section 25 of the Covenant has also been adjudicated.

In the above Judgment the Constitutional Court has concluded that the legislator, when passing the impugned norms, has not violated Section 101 of the Satversme, but has realized the duty assigned to it by this Section – has passed the legal norm, needed for implementation of fundamental rights.

The Satversme and the Covenant permits well-grounded restrictions to the election rights, however, these restrictions shall meet certain criteria.

As regards the above conclusions, the submitters of the claim and the constitutional complaint have not mentioned any new circumstances; the Court has not established such circumstances either. Thus, **in the framework of this matter it is not necessary to repeatedly assess the fact that the impugned Saeima Election Law norms envisage restrictions to the election rights as well as the fact that such restrictions are permissible, if they meet the requirements of certain criteria, namely – they have been determined by law, have a legitimate aim and are proportionate with this aim.**

11.4. In the operative part of the Constitutional Court August 30, 2000 Judgment the conformity of the impugned norms was assessed neither with Section 91 of the Satversme nor Section 26 of the Covenant. However, the Constitutional Court assessed the conformity of the impugned norms with Section 14 of the Convention and declared as ungrounded the statement of the applicants that the impugned norms, by forbidding nomination and electing Latvian citizens to the Saeima or local governments, discriminate them just because of their political membership. To their mind that contradicts prohibition of discrimination on the ground of political conviction (opinion), incorporated in Section 2 of the Covenant and Section 14 of the Convention. The impugned norms do not envisage difference in treatment just because of political conviction (opinion) of the person, but they determine restriction of the election right for activities (after January 13, 1991) against the renewed democratic system (*sk. Satversmes tiesas 2000. gada 30. augusta sprieduma secinājumu daļas 4. punktu; see Item 4 of the concluding part of the Constitutional Court August 30, 2000 Judgment).*

In the above Judgment the Constitutional Court pointed also to the fact that – in accordance with ECHR practice – Section 14 of the Convention does not include any prohibition of difference in treatment with regard to realization of rights and freedoms, included in the Convention. The principle of equal treatment shall be regarded as violated only if the determination of differences has no impartial or well-grounded substantiation and legitimate aim.

Later the Constitutional Court in its Judgments has repeatedly pointed out that the principle of legal equality follows also from Section 91 of the Satversme, which obliges equal attitude only to persons, who are in equal and comparable circumstances. Different attitude to such persons is permitted only on objective and reasonable grounds (*sk., piemēram, Satversmes tiesas sprieduma lietā No. 2004-18-0106 13. punktu; see, for example) the Constitutional Court Judgment in case No. 2004-18-0106; Item 13).*

In its August 30, 2000 Judgment the Constitutional Court, when assessing the conformity of the impugned norms with Section 14 of the Convention, has also in essence reviewed the compliance of the norms with Section 91 of the Satversme and Section 26 of the Covenant. Thus the claim on whether the impugned norms envisage a differentiated attitude on the basis of political opinion of a person has been adjudicated.

The conformity of the impugned norms with the principle of legal equality in this matter has to be established only as far as it is indicated in the constitutional complaint to the aspect, which has not been assessed in August 30, 2000 Judgment. Namely, the Court has to examine whether the impugned norms contain discrimination, which expresses itself in equal attitude to persons, who are in different circumstances.

11. Thus within the framework of this matter the Constitutional Court has to assess:

i. whether the impugned norms of the Local Government Election Law comply with Section 101 of the Satversme, as read together with Sections 1 and 91 of the Satversme as well as with Sections 25 and 26 of the Covenant;

ii. whether the restrictions to the Saeima election rights, incorporated in the impugned norms have a legitimate aim and whether they are commensurate (proportionate) with this aim;

iii. whether the fundamental rights are restricted in a discriminating way.

12. The second Paragraph of Section 101 of the Satversme determines that " Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union, who permanently resides in Latvia, has the right, as provided for by law, to participate in the work of local governments. The working language of local governments is the Latvian language". It follows from the claim and the constitutional complaint that the impugned norms are unconformable with the first and second sentence of Section 101 (the second Paragraph) of the Satversme; conformity with the third sentence is not contested.

The first sentence of Section 101 of the Satversme shall be interpreted by taking into consideration the international liabilities undertaken by Latvia by confirming the Charter of European Local Governments (hereinafter – the Charter) and acceding to the Covenant. In its turn, when interpreting the second sentence of Section 101 (the second Paragraph), liabilities of Latvia as the Member State of the European Union shall be taken into consideration.

13.1. In the preamble of the Charter it is recognized that ”local authority is one of the basic grounds of every democratic structure”. Besides, ”the right of the citizens to participate in the management of State affairs belongs to the principles of democracy, which is common to all the European Union Member States”.

Local government means the rights of the local power and the ability in the framework determined by law to regulate and lead a significant part of State affairs on their responsibility and in the interests of the local residents. These rights are realized by Councils or meetings of representatives, members of which are freely elected on the basis of equal, direct and universal elections by secret ballot (Section 3 of the Charter).

Even though in Section 101 it is *expressis verbis* envisaged that the local governments shall be elected by full-fledged citizens, however, when interpreting this norm as read together with the Charter, in can be concluded that the legislator has the duty of passing such norms, which would determine the elections of the local governments to be held on the basis of equal, direct and universal elections by secret ballot; namely – analogous to the principles of the Saeima elections.

13.2. Simultaneously, it is within the authority of the legislator to determine what shall be regarded as ”a full-fledged citizen” in the understanding of this Section. At the Saeima session the deputy Linards Muciņš pointed it out, when expressing the motion of the responsible Committee about supplementing Section 101 with the second Paragraph of a certain content: ” From here – Sections 8 and 9 – the term ”a full-fledged citizen” has been taken. Thus really proper, weighed out and normal is the motion: ”Local Governments shall be elected by full-fledged Latvian citizens”. I do not see any reason for ”fuss”, especially because we use the term in the same interpretation also in Sections 8 and 9 of the Satversme. And further on we, of course, may interpret in the election laws who we consider full-fledged Latvian citizens (both in passive and active election rights)”” (*Saeimas 2002 gada 30. aprīļa sēdes stenogramma; Verbatim Report of the Saeima April 30, 2002 session// Latvijas Vēstnesis No. 66 (2641), 03.05.2002*).

The notion ” a full-fledged citizen” with regard to Latvian citizens in the context of Section 9 of the Satversme (the Saeima Elections) and Section 101 shall be similarly interpreted. Besides, as can be seen from the words of the deputy Linards Muciņš when referring not only to Section 8 but also Section 9 of the Satversme, the notion ”are elected by full-fledged citizens” refers not only to active but also to passive election rights.

13.3. Section 101, the first Paragraph, which determines 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” relates to Section 25, Sub-item ”a” of the Covenant.

Contents of Section 25 of the Covenant contains general provisions on the right to take part in the conduct of public affairs (Sub-item ”a”) as well as access to public service. In the practice of the UNO Human Rights Committee complaints, connected with municipal elections, are reviewed by referring to this Sub-item and not to concrete norms on general elections (*Case law of the Committee on Human Rights. Compilers: Ria Hanski and Martin Shanin; the Institute of Human Rights, University Abo Academy (Turku), 2004, p. 411).*Besides these norms are attributed not only to active but also to passive election rights.

Thus, for example, when reviewing the matter on whether the rights of the Latvian citizen Antoņina Ignatāne, envisaged in Sections 2 and 25 of the Covenant, have been violated by not allowing her to be a candidate for March of 1997 municipal elections in the city of Riga the Human Rights Committee has remarked that ”Section 25 (of the Covenant) guarantees to every citizen the right and the opportunity, without any of the distinctions, including the language, mentioned in Section 2 to be elected at genuine periodic elections” [*ANO Cilvēktiesību komitejas 2001. gada 31.jūlija viedoklis No. CCPR/C/72/D/884/1999 par sūdzību No. 884/1999, 7.3. punkts; the viewpoint of the UNO Committee of Human Rights July 31, 2001 No.CCPR/C/72/D/884/1999 on the complaint No. 884/1999, Item 7.3.// Latvijas Vēstnesis, No. 153(2540), 25.10.2001]*.

13.4. Constitutions of other European states contain the norms, similar to those in Section 101 of the Satversme. For example, Section 156 of the Estonian Constitution envisages:

”Institution of the local government representation - the Council – shall be elected in free elections to the term of three years. Elections are universal, equal and direct and by secret ballot.

All persons, who have reached the age of eighteen years and permanently reside in the territory of the local government have the right to vote in the local government elections" *(Constitutions of Europe. Texts collected by the Council of Europe Venice Commission, Volume I, Martinius Nijhof Publishers leiden Boston 2004, p.620).*

The Constitutional Review Chamber of the Estonian Supreme Court in its July 15, 2002 Judgment concerning the above Section has concluded that "One may distinguish three aspects regarding the subjective election rights: the right to run for elections, the right to vote and the right to nominate somebody as a candidate. […] the principles, which are determined in Section 156 (the first Paragraph) of the Constitution, include all the above subjective rights" (Judgment *of the Constitutional Review Chamber of the Supreme Court in the case No. 3-4-1-7-02, www.codices.coe.int).*

13.5. When becoming a European Union Member State, Latvia has undertaken also the liabilities, following from the EU Foundation Agreement. The agreement anticipates that "every citizen of the Union, who permanently resides in a Member State, but is not the citizen of it, has the right to vote and stand for local government elections in this Member State in accordance with the same provisions as the citizens of the state". The right of the citizens of the EU Member States to participate in local government elections in the state, in which they live, is functionally connected with the right of free movement, which is in effect in Europe. The right to take part in municipal elections shall avert the unfavorable consequences, created by choosing a place of residence in the European Union and the duty of this right is to ensure equal attitude in the already existing election system (*see: Ehlers D. Europäische Grundrechte und Grundfreiheiten, De Gruyter Recht, Berlin, 2003, S.482).* The issue is regulated in more detail in December 19, 1994 Guidelines 1994/80/EK on the right of the European Union participants, who permanently reside in one of the European Union Member States, but who are not the citizens of the respective Member State, to take part in the activities of local governments (hereinafter- the Guidelines).

Also in the annotation, which was attached to the draft Law on Amendments to Section 101 (the second Paragraph) of the Satversme, it is stressed that Amendments to Section 101 of the Satversme are needed to ensure harmony of the Latvian constitutional system with the European Union Law. Making reference to Section 19 (the first Paragraph) of the Foundation Agreement of the European Community it is pointed out in the annotation that Section 101 of the Satversme, which envisages the right to elect local governments only to Latvian citizens, was not in conformity with the above EU documents. In its turn the

Amendments to Section 101 of the Satversme will guarantee the rights of the EU citizens to take part in the activities of local governments, as has been determined in Section 19 of the European Community Foundation Agreement (*sk. Saeimas Likumprojectu reģistru; see the Saeima Draft Law Register http://www.saeima.lv).* It is pointed out in the annotation that Amendments to the Local Government Election Law are also needed.

Thus **Section 101 of the Satversme determines for a full-fledged citizens of the Republic of Latvia and any other European Union Member State equal subjective local government election rights, inter alia also the right to stand for local government elections.**

13.6. However, the subjective local government election rights, which are envisaged in Section 101 of the Satversme, are not absolute. First of all, already the content of the text of the Section contains an indication to the fact, that only full-fledged citizens enjoy the above right. Secondly, the Constitutional Court has repeatedly pointed out that the Satversme is a single aggregate body and its norms shall be interpreted systemically.

The Constitutional Review Chamber of the Estonian Supreme Court has stressed that ”democratic principles themselves do not exclude reasonable restrictions of subjective election rights” (*Judgment of the Constitutional Review Chamber of the Supreme Court in the case No. 3-4-1-7-02,www.codices.coe.int).*

The Constitutional Court of Czechoslovakia, when reviewing the compliance of the lustration laws with the Constitution and international human rights norms, establishes that ”a democratic state not only has the right but also the duty to protect the principles on which it has been created” (*Čehoslovākijas Konstitucionālās tiesas 1992.gada 26. novembra spriedums lietā Nr. Pl. US 1/92; the Czechoslovakia Constitutional Court November 26, 1992 Judgment in case No. Pl. US 1/92 // ”On the Lustration Statute”, www.codices.coe.int).*

Thus also the subjective rights, following from Section 101 of the Satversme, may be restricted to protect the values, guaranteed in the Satversme, first of all the rights of other persons.

14. Thus, the impugned norms contain restrictions of person’s subjective rights to stand for the Saeima elections and the local government elections. To assess whether these restrictions comply with the Satversme and the Covenant, one has to establish whether they are: 1) determined by law, 2) are justified by a legitimate aim, 3) are commensurate (proportionate) with the aim.Conditionally the restrictions can be divided in several groups:

i. restrictions to persons, who after January 13, 1991 have been active in CPSU (CP of Latvia); Working People's International Front of the Latvian SSR; the United Board of Working Bodies; Organization of War and Labor Veterans; All-Latvia Salvation Committee or its regional committees;
ii. restrictions to persons, who belong or have belonged to the regular staff of the USSR, Latvian SSR or the former totalitarian state security, intelligence or counterintelligence services;
iii. restrictions to persons, who are or have been staff employees of presently existing foreign state security, intelligence or counter-intelligence services.

Besides, separately – in the framework of the group, mentioned in Item 3 - shall be assessed the restrictions determined in the Local Government Election Law as regards the citizens of European Union Member States.

15. The impugned norms have been determined by laws, passed and promulgated under the procedure provided for by the laws.

16. In the Constitutional Court August 30, 2000 Judgment it is concluded that "the aim of the restrictions is to protect the democratic structure of the State, national security and territorial integrity of Latvia" (*Satversmes tiesas 2000. gada 30. augusta spriedumu lietā No. 2000-03-01 secinājumu daļas 6. punkts; the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 6 of the concluding part).*The Saeima in its written replies refers to the same aims.

16.1. As regards restrictions, determined in Sections 5 and 6 of the Saeima Election Law, ECHR has also concluded that " the impugned restriction pursued aims compatible with the principle of the rule of law and the general objectives of the Convention, namely, the protection of the State's independence, democratic order and national security (*Ždanoka v. Latvia [GC], para. 118).*

16.2. When reviewing the matter "Sidabras and Džiautas v. Lithuania" ECHR in its turn recognized that the differentiated attitude to the former KGB employees (even though by realizing other rights, guaranteed in the Convention) had a legitimate aim (even though it has not been proportionate). ECHR inter alia stressed also the significance of the principle of self-defending democracy (*Sidabras and Džiautas v. Lithuania; [2004] ECHR 395).*

16.3. The Saeima points out that the restriction, envisaged in Section 5, Item 5 of the Saeima Election Law and Section 9, Item 6 of the first Paragraph of the Local Government Election Law "is directed not only to the past but also to the future". Namely, the impugned norms determine that not only persons, who have been USSR or Latvian SSR or foreign staff employees of the State Security, intelligence or counter-intelligence services but also persons, who at the present moment are the staff employees of such services, cannot be nominated as candidates and elected in the Saeima or the Local Government Dome (Council).

The Constitutional Court agrees with this viewpoint, taking into consideration the fact that Latvia has become EU and NATO Member State only recently and still is within the range of intense attention of services of different foreign states. Such a person in the status of local government – especially in the borderland area – which is deliberately directed to the protection of interests of other state, might essentially harm the security and territorial integrity of Latvia.

17. Already in its August 30, 2000 Judgment the Constitutional Court concluded: "To establish whether the applied measure, i.e., restrictions of the passive election right is proportional to the aims – to protect, firstly, the democratic state system, which is ensured also by observing the universally approved ethical norms, secondly, national security and territorial unity of Latvia, one has to evaluate the political situation in the state and additional circumstances. As the legislator has repeatedly evaluated the political and historical conditions of the development of democracy in connection with the issues of the election right, then – taking into consideration the above mentioned conclusions – the Court does not hold that at the present moment there exists the necessity to doubt the proportionality of the applied measure and its aim" (*Satversmes tiesas 2000. gada 30. augusta sprieduma lietā No. 2000-03-01 secinājumu dalās 7. punktu; the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 7 of the concluding part).* Simultaneously the Constitutional Court stressed that "legislator, periodically evaluating the political situation in the state as well as the necessity and validity of the restrictions should take the decision on determining the term of the restrictions in the impugned norms, as such restrictions to the passive election rights may last only for a certain period of time" (*turpat; the same source).*

In difference from the greatest number of European post-socialist states, the national sovereignty of which was not doubted even during the period of socialist regime, the Baltic States, when in transition from the totalitarian regime to democracy, had to solve a double task, namely, to renew both the democratic regime and the State sovereignty. Besides, USSR colonizing policy had influenced Latvia especially hard.

Therefore the situation in Latvia may not be assessed only on the basis of the experience on the period of time (five years), which is necessary for stabilization of the democratic regime in the state, compiled by the European Council.

17.1. ECHR, when assessing the restrictions, determined in Section 5, Item 6 of the Saeima Election Law, has stated that it " sees nothing arbitrary in the domestic courts' findings that the unsuccessful attempted coups in the Baltic States in January 1991 and then in August 1991 were organized and conducted under the direction of the CPSU and its regional branches, including the CPL" (*Ždanoka v. Latvia[GC] para. 120).*

Besides ECHR holds: "The Latvian authorities' view that even today the applicant's former position in the CPL, coupled with her stance during the events of 1991, still warrant her exclusion from standing as a candidate to the national Parliament, can be considered to be in line with the requirements of Article 3 of Protocol No.1. The impugned statutory restriction as applied to the applicant has not been found to be arbitrary or disproportionate. The applicant's current or recent conduct is not a material consideration, given that the statutory restriction in question relates only to her political stance during the crucial period of Latvia's struggle for "democracy through independence" in 1991.

While such a measure may scarcely be considered acceptable in the context of one political system, for example in a country which has an established framework of democratic institutions going back many decades or centuries, it may nonetheless be considered acceptable in Latvia in view of the historico-political context which led to its adoption and given the threat to the new democratic order posed by the resurgence of ideas which, if allowed to take ground, might appear capable of restoring the former regime" (*turpat, 132.-133.punkts; the same source, para. 132, 133).*

ECHR recognizes in the present case that " the national authorities of Latvia, both legislative and judicial, are better placed to assess the difficulties faced in establishing and safeguarding the democratic order. Those authorities should therefore be left sufficient latitude to assess the needs of their society in building confidence in the new democratic institutions,, including the national parliament, and to answer the question whether the impugned measure is still needed for these purposes" (*turpat, 134.p.; the same source, para.134).*

17.2. The Constitutional Court, when assessing the proportionality of the restriction determined in Section 5, Item 6 of the Saeima Election Law and Section 9, Item 5 of the first Paragraph, takes into consideration the

viewpoint of ECHR that at the present moment one cannot presume that Latvia has overstepped its wide margin of freedom of action. Thus the Constitutional Court concludes that the above impugned norm complies with Sections 1, 9, 91 and 101 of the Satversme, as well as with Sections 25 and 26 of the Covenant.

17.3. Simultaneously ECHR in its Judgment "Ždanoka v. Latvia" has stressed the viewpoint on the duty of the Parliament of Latvia to establish a time limit on the restrictions, which is expressed in the Constitutional Court August 30, 2000 Judgment. "In the light of this warning, even if today Latvia cannot be considered to have overstepped its wide margin of appreciation under Article 3 of Protocol No.1, it is nevertheless the case that the Latvian Parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end. Such a conclusion seems all the more justified in view of the greater stability, which Latvia now enjoys, inter alia, by reason of its full European integration […] Hence, the failure by the Latvian legislature to take active steps in this connection may result in a different finding by the Court, like it was in case Christine Goodwin v. the United Kingdom (*see*: *Christine Goodwin v. the United Kingdom [GC], No. 28957/95, para. 71-93; ECHR 2002-VI)" (Ždanoka V. Latvia [GC], para 135).*

The Constitutional Court repeatedly draws the attention of the Saeima to the urgent need to revise the necessity of this restriction in the nearest time.

18. When assessing the impugned restrictions, which have been determined to persons, who have been USSR or Latvian SSR staff employees of Security services, the Constitutional Court takes into consideration several circumstances.

18.1. In the duties of LSSR State Security Committee (henceforth – SSC) were included classic intelligence and counter-intelligence as well as other specified functions: control of the domestic policy, guarantee of transport and economic counter-intelligence, ideological counter-intelligence, struggle against the organized crime etc. The fact that it acted under the guidance of the CPSU alone testifies about the specific role of SSC in ensurance of public ideological control. The struggle against "the ideological sabotage of the enemies" has always been one of the priorities of the SSC. However, simultaneously SSC carried out also non-political duties in public interests; for example, it realized measures in struggling against the organized crime and anti-terrorism duties in the transport sector.

The legislator of other states has also concluded that within the SSC structures there have been employees, whose activities were not contrary to democratic

values, for example, Section 3, Paragraph 1 of the respective Lithuanian Law established exceptions for persons, who – while working in the State Security Committee – had reviewed only criminal cases and terminated their activities in the State Security Committee not later than on March 11, 1990 [*see: Law on the assessment of the USRR State Security Committee (NKVD, NKGB, MGB, KGB) and the current activities of the staff members of this organization; http://www3.lrs.lt/pls/inter2/dokpaieska.forma_e?]*.

Even though the impugned norms refer only to USSR and LSSR SSC staff employees, they simultaneously include both – persons, who with their activities have been against democratic state values and persons who have carried out politically neutral duties, as well as persons, who with their activities have actively fought against the renewal of democratic values in Latvia.

Mārtiņš Mits – the reader of the Riga Graduate School of Law – in his conclusion on case No. 2004-13-0106 pointed out that the restrictions, incorporated in the specific laws, which refer to the former SSC employees, have been formulated too universally and thus it is not possible to establish the proportionality of the restrictions with the legitimate aim in each concrete case.

18.2. Different restrictions, which are connected with activities of persons in the repressive structures of the former regime, in wider or narrower range have been determined in the greatest number of post socialist states: Czechoslovakia, Poland, Hungary, Lithuania etc. The Constitutional Court has substantiated the necessity of determination of restrictions in its August 30, 2000 Judgment. Later the Constitutional Court has also stressed: ” To strengthen the democratic structure of the renewed state after the collapse of the totalitarian regime, it was necessary to assess and politically, historically and legally evaluate the material and moral detriment, which the SSC has caused to the State of Latvia and its residents. In its turn, it was possible to obtain public loyalty to the new democratic institutions only by confining the activities of the supporters and representatives of the totalitarian regime in the above institutions” (*sk. Satversmes tiesas 2005.gada 22.marta spriedumu lietā No. 2004-13-0106 13.1. punktu; see the Constitutional Court March 22, 2005 Judgment in case No. 2004-13-0106, Item 13.1).* It is not necessary under the constant review to repeatedly substantiate that restrictions at the time, when they were determined, were needed. In the framework of this case the Constitutional Court shall only take the decision about their proportionality at the present moment.

The experience of post socialist states, which has been gained while overcoming the consequences of the former regime and transition to a democratic state has been compiled in Resolution of the European Council Parliamentary Assembly No. 1096 (1996) ”On measures to

dismantle the heritage of former communist totalitarian systems" [*Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems]*. In this Resolution, referring to the European Council Legal affairs and Human Rights Committee Document No. 7568 about guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law, it is stressed that "disqualification in the result of lustration process shall not exceed the time limit of five years, as one shall not underestimate the possibility that positive changes may arise in attitude and habits of persons; it would be preferable to complete the lustration process till December 31, 1999, as till that time the democratic system in the former communist totalitarian states would be steady". The Constitutional Court, when analyzing these documents in August 30, 2000 Judgment, pointed out that the publicly political situation of each state shall be individually assessed, as the above Resolution expresses also concern that the transitional period, the aim of which is liquidation of the heritage of the former communist totalitarian system, may suffer failure and its result may be the restoring of "velvety" totalitarian regime.

18.3. Well-grounded is the viewpoint, expressed in the Saeima written reply that the impugned restriction shall not be assessed in an isolated way, namely, as the restriction of human rights of separate persons, but in a complex way – by taking into consideration the peculiarities of the Latvian democratic system.

The Baltic States, in comparison with other European post socialist states, are in a different situation. Namely, at the disposal of Latvia is not a complete body of documents on the activities of SSC of the USSR and Latvian SSR. From the viewpoints, expressed by experts as well as from the former Court practice in stating the fact of collaboration with SSC, it follows that the SSC document body, accessible in Latvia, does not give the possibility to assess the contents of every concrete fact of collaboration with the SSC. Accessible documents – registration files of active agents and different registration books – do not testify about the content and motivation of collaboration.

Therefore it is not possible to reach the legitimate aim with more considerate measures, which would violate the fundamental rights in a lesser degree.

18.4. Simultaneously it can be concluded that ungrounded is the viewpoint, expressed in written replies of the Saeima, that in case, if the impugned norm had not been passed, an inadmissible and illogical situation might arise, as the Law "On the State Secret" determines that the Saeima deputy because of his/her post shall be granted access to official secrets.

Section 12 (Item 4 of the third Paragraph) of the Law ”On Official Secrets” determines that members of the Saeima, on the basis of the position held thereof, shall have access to official secrets and the right to utilize them for the performance of official (service) duties, if there are not restrictions specified in Section 9, Paragraph three of this Law.

Section 9, Items 4 and 5 of Paragraph 3 of this Law envisage that ”access to confidential, secret and top secret official secret objects shall be denied to a person: […] 4) who is or has been a staff employee or a non-staff employee of the security service, intelligence or counter-intelligence service of the USSR, Latvian SSR or a foreign state other than the Member States of the European Union or North Atlantic Treaty Organization, or an agent, resident or safe-house keeper thereof; 5) who after 13 January 1991, has worked in the CPSU (LCP), the Working People’s International Front of the Latvian SSR, the United Council of Labour Collectives, the Organization of War and Labour Veterans or the All-Latvia Salvation of Society Committee”.

On the one hand a person, who has been elected a Saeima deputy may be denied access to official secrets, as the Law ”On Official Secrets” envisages stricter criteria than the Saeima Election Law. For example, they refer not only to the person, who has been the staff-employee of the USSR and Latvian SSR Security service, but also to the person, who has been a non-staff employee, an agent, resident or safe-house keeper.

On the other hand the impugned norms prohibit a person, who is a foreign state security service staff employee, to become the Saeima or the Dome (Council) deputy. In its turn the Law ”On Official Secrets” denies access to confidential, secret and top secret official secret objects only to persons, who are or have been staff or non-staff employees of the security service (intelligence or counter-intelligence) of a foreign state other than the Member States of the European Union or North Atlantic Treaty Organization or an agent, resident or safe-house keeper.

18.5. Assessing why it is necessary to retain the impugned restrictions for a longer period than in other European post socialist states, the Constitutional Court takes into consideration also the fact that the occupation army was withdrawn from Latvia only in 1994, that is several years after the time when in other states the process of lustration had been commenced.

Because of the same reason the argument of the submitter that the restrictions have been determined only in 1995 is of no importance.
Maintaining of the restrictions for a longer period is separately justified by circumstances connected with the heritage of the past, which has not

been solved, as for example, the issue on the state border with the successor of the USSR rights – Russia.

18.6. In the States, which had the complete archives of the Security services of the former regime, it was possible to ensure that information on the activities of every deputy both in the past and in the processes of change reaches the society. Such information was a precondition for the possibility of the voters to decide whether the respective candidate was worthy to represent them.

In Latvia, taking into consideration that there were not the documents of the above archives, it is not possible to thoroughly conclude what the nature of every concrete person, connected with the SSC has been. It means that it is not possible to reasonably individualize the issue on the fact how potentially dangerous a concrete person may turn out to be to the State of Latvia. In the same way it is not possible to individualize the issue on the fact whether activity of a concrete person in the Parliament is not at stark variance with the ethical norms and does not violate the feelings of a certain group of voters in such an extent that it harms loyalty to the whole Parliament and thus – impairs democracy in the State. The legislator, when passing the restrictions, bases it on the presumption that any former SSC staff employee may be dangerous to the State and does not meet the ethical criteria.

The State of Latvia cannot undertake responsibility about the fact that the materials of the above archives are not at its disposal.

On the one hand, the activity that the State ignores the potential damage what the former employees of the repressive institutions, who are against the state, might do to the new regime, at least during its initial stage, is at variance with the principle of ”self-defending democracy”. However, on the other hand, determination of long-lasting restrictions would be at variance with the protection of human rights, especially as regards persons, who are loyal to Latvia as an independent and democratic state.

18.7. The Constitutional Court takes into consideration also the fact that the legislator has periodically tried to assess the necessity of these restrictions. Thus on May 27, 2004 the Saeima, supplementing the Transitional Provisions of the Law ”On Maintenance and Use of Documents of the Former State Security Committee and on Stating the Facts about Person’s Collaboration with the State Security Committee” assigned the Cabinet of Ministers with the duty of assessing the necessity and validity of the restrictions determined in laws to the former SSC staff employees as well as SSC informers till June 1, 2005. The Cabinet of Ministers has elaborated the above document and

submitted it to the Saeima. In it is expressed the viewpoint that at the present moment it is not possible to repeal the impugned norms (*sk. lietas materiālu 1. sējuma 189.-209.lpp.; see Volume I, pp. 189 -209 of the materials in the matter).*

18.8. In such circumstances, if the concrete restrictions are still maintained for some time, the Constitutional Court does not find an essential disproportion between the benefit, which public gains by maintenance of the impugned restrictions and the damage to the interests of an individual. Simultaneously the Constitutional Court draws the attention of the Saeima to the fact that it is necessary to assess these restrictions in the nearest possible time and – if it is not possible to repeal them – establish a procedure in accordance with which exceptions referring to certain persons may be permitted, which cannot evidently endanger democratic values. Restrictions, envisaged in the impugned norms may be justified only by the previously mentioned legitimate aims. It is inadmissible that the restrictions are dictated only by reasons of political competition.

19. Restrictions, which are determined in Section 5, Item 5 of the Saeima Election Law and Section 9, Item 6 of the first Paragraph of the Local Government Election Law and which – as has been remarked by the Saeima- ”are directed not only to the past but also to the future” all in all are proportionate with the legitimate aim.

The Constitutional Court takes into consideration that many states have determined different restrictions, inter alia anticipating several positions and functions, which cannot be connected with the status of the Parliament or local government deputy.

For example, in accordance with Section 2, Paragraph 2 of the Lithuania Seima Election Law, only a Lithuanian citizen, who is not under allegiance to a foreign state may become the deputy of the parliament (*see: Law on Elections to the Seimas, http://www3.lrs.lt/pls/inter2/dokpaieska.forma_e?).*

In Belgium the status of the municipality deputy is not compatible also with the status of a police commissar or officer, as well as with the status of a member of public security forces (*see: Structure and operation of local and regional democracy. Belgium, http://www.loreg.coe.int).*

Simultaneously the Constitutional Court requests the Saeima to ascertain whether it is necessary as concerns local government elections to determine restrictions to citizens of other EU states, who are or have been employees of security services of their states, if such restrictions

are not determined to a Latvian citizen, who is or has been an employee of the security service. The Constitutional Court asks to assess, whether Latvia – as an EU Member State – has observed its liabilities; whether a different attitude from the EU legal view is not being created. Section 6 of the Guidelines permits that member States determine also restrictions, not mentioned in the Guidelines; however, they should be the same as to the citizens of the state itself.

20. Well-grounded is the viewpoint of the Saeima that January of 1991 as a matter of fact became the border point, when the people in Latvia made their choice about on what ”side of the barricades” to stand. Ones protected Latvian democracy and independence, the others tried by different means to break it and achieve the return of the previous regime. **Persons, who at that time fought for Latvia as an independent and democratic state, and persons, who were against it, cannot be regarded as equally dangerous to the state security, territorial integrity and democracy.**

20.1. The Constitutional Court has concluded that the principle of legal equality concedes and even demands different attitude to persons, who are in different circumstances. **However, only if it has been established that there is an objective and reasonable aim, the principle of equality permits** different attitude to persons, who are in equal circumstances or **equal attitude to persons, who are in different circumstances (***sk., piemēram Satversmes tiesas sprieduma lietā No. 2004-18-0106 secinājumu daļas 13. punktu; see, for example, the Constitutional Court Judgment in case No. 2004-18-0106, Item 13 of the concluding part).*

ECHR has concluded that the right established in Section 14 of the Convention to enjoy the rights guaranteed in the Convention without any discrimination is violated if a state without an objective and reasonable ground permits a differentiated attitude to persons, who are in a similar (analogous) situation. However, ECHR holds that this is not the only prohibited case of discrimination. The right to enjoy the rights guaranteed in the Convention without any discrimination is violated also in case if the state without a reasonable and objective ground does not differently treat persons, who are in essentially different situation (*see Thlimmenos v. Greece [GC], [2000] ECHR 162; Jane Smith v. the United Kingdom [GC], [2001] ECHR 45).*

Thus a differentiated attitude is necessary to persons, who - at the period critical for the State of Latvia – have made a clear choice in favor of Latvia as the independent and democratic state and have rendered assistance to it. The legislator, when determining equally hard restrictions to passive election rights for all former SSC staff employees

and not envisaging the possibility to differently treat persons, who by their activities have advanced the renewal of Latvia as the independent and democratic state, has permitted equal attitude to persons, who are in essentially different circumstances. Such an attitude has no reasonable and objective ground.

20.2. It is not within the competence of the Constitutional Court to determine such criteria and procedures, which would allow identification of those staff employees of SSC, who by their activities during critical events have proved that they defend Latvia as the independent and democratic state. Only the legislator may elaborate such criteria and procedures.

The Constitutional Court agrees to the viewpoint following from the Saeima written reply that under constant review the impugned legal norms and not the achievements in the service to the Fatherland of the submitter of the constitutional complaint J.Bojārs or the potential " degree of danger" shall be assessed. However, one has to take into consideration that in difference from the abstract control of a legal norm, the constitutional complaint is not a measure, which serves only for straightening out the legal system. It – first of all – is the means for serving the protection of the fundamental rights of the submitter of the constitutional complaint. Therefore the Constitutional Court shall individually assess the proportionality of the contested restrictions regarding the submitter of the constitutional complaint.

The Constitutional Court may not ignore the circumstance that J.Bojārs has given a noticeable contribution to the renewal of democratic values in Latvia by voting for May 4 Declaration of the Supreme Council of the Latvian SSR "On the Renewal of the Independence of the Republic of Latvia" and August 21, 1991constitutional Law "On the Republic of Latvia Status as a State". Besides he took part in the preparation of May 4, 1990 Declaration of the Supreme Council "On the Access of the Republic of Latvia to International Instruments on Human Rights Issues". By this document Latvia acceded to more than 50 essentially important international legal instruments.

The Constitutional Court also takes into consideration the fact that Section 2 of the Law " On Order of Three Stars" determined:
" (1) The Order of Three Stars shall be awarded for achievement in the service to the Fatherland.
(2) Achievements in the service to the Fatherland for which the Order of Three Stars is awarded may be work in the field of the state, local governments, public, culture and economy. The Order may also be awarded to soldiers of the mandatory service and citizens of other states, Achievements shall be understood to mean long term, exemplary and successful activity and individual exceptional actions during the period

of renewal of the independence of Latvia or the period of further strengthening and developing of the state".

The Order was awarded by the Council of the Order. In the body of the Council of the Order were the State President (Chairperson of the Council), the Prime Minister and five persons, invited by the State President. The Constitutional Court holds that the above institution was competent enough to take the decision whether a concrete activity was to be acknowledged as a prominent achievement in the period of the renewal of the independence in Latvia.

When awarding J. Bojārs with the high State Order the State has acknowledged that in "borderline" events he with his activities has proved his loyalty to Latvia as the independent and democratic republic. Thus, he is in different circumstances than those persons, who in critical events acted against Latvia as the independent and democratic state; and the duty of the legislator was to treat him differently.

Thus – as regards the submitter of the constitutional complaint - the impugned restriction is disproportionate and unconformable with Sections 1, 9, 91 and 101 of the Satversme.

20.3. Even though the Saeima viewpoint that under the present circumstances it would be difficult for a court or any other institution to assess the degree of dangerousness of a person is well – grounded, ungrounded it the statement of the Saeima that in any case only a State institution may act as the assessor. In cases, when the person by his/her eager activities has proved his/her positive attitude to the Latvian State, besides has publicly acknowledged that he/she has formerly been SSC staff employee, there exists no anxiety that this person will essentially endanger the security of Latvia, if the voters will make a choice on his/her suitability for the activities of a deputy. In such a case by a measure, restricting the rights of a person in a lesser degree, like e.g. an informative remark about the employment of the person in SSC, the legitimate aim might be reached in the same quality as the impugned norms.

The experience of Latvia in the elections of the European Parliament shows that the voters are not afraid to entrust their representation to persons, who have collaborated with SSC. Therefore it cannot be held that being in the Saeima of any such persons shall not be acceptable from the ethical viewpoint.

On the basis of Sections 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

1. **To declare that Section 5, Items 5 and 6 of the Saeima Election Law and Section 9, Items 5 and 6 of the first Paragraph of the City Dome, Region Dome and Rural District Council Election Law complies with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme and Sections 25 and 26 of the International Covenant on Civil and Political Rights.**

2. **To declare that with regard to the submitter of the constitutional complaint Juris Bojārs Section 5, Item 5 of the Saeima Election Law and Section 9, Item 6 of the first Paragraph of the City Dome, Region Dome and Rural District Council are unconformable with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme as well as with Sections 25 and 26 of the International Covenant on Civil and Political Rights and shall lose validity from the day of publishing of the Judgment.**

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the day of its publication.

The Chairman of the Court session A.Endziņš