THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, March 22, 2005

JUDGMENT
in the name of the Republic of Latvia
in case No. 2004 – 13 - 0106

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins and Gunārs Kūtris with the Court session secretary Evija Ruka in presence of Aleksandrs Bartaševičs - the authorized representative of the submitters of the claim i.e. twenty deputies of the 8.th Saeima: A.Bartaševičs, J.Urbanovičs, J.Pliners, V.Agešins, J.Ribakovs, V.Orlovs, A.Klementjevs, A.Vidavskis, B.Cilevičs, O.Deņisovs, J.Solovjovs, J.Jurkāns, M.Bekasovs, S.Fjodorovs, A.Golubovs, A.Ulme, A.Aleksejevs, A.Tolmačovs, J.Sokolovskis and V.Buzajevs as well as the authorized representative of the institution, which has passed the impugned act – the Saeima, the head of the Legal Affairs Bureau Gunārs Kusiņš under Article 85 of the Republic of Latvia Satversme (Constitution), and Articles 16 (Items 1 and 6) and 17 (Item 3 of the First Part) on February 22, 2005 in a public hearing in Riga reviewed the matter

”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 Article 101 of the Republic of Latvia Satversme (Constitution), Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with Article 3 of its First Protocol””.

The establishing part

1. On May 19, 1994 the Saeima passed 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” (henceforth – SSC Document Law), which took effect on

June 3, 1994. Article 17 of this Law determined that ”after ten years from the date of this Law taking effect, statement of the fact of collaboration with the SSC under the procedure established by Articles 14 and 15 of this Law shall not be permitted, and his/her possible collaboration with the SSC shall not be used in legal relations against this person”.

2. 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 State Security Committee”” was adopted. By this Law Article 17 of the SSC Document Law was amended 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 SSC under the procedure established by Articles 14 and 15 of this Law shall not be permitted and his/her possible collaboration with the SSC shall not be used in legal relations against this person”. The Transitional Provisions of the SSC Document Law were supplemented with special Amendments, namely: ”Up to June 1, 2005 the Cabinet of Ministers shall assess the necessity and validity of the restrictions for SSC staff and supernumerary employees as well as the SSC informers, which are provided for in laws. The Cabinet of Ministers shall forward the assessment of the restrictions provided for in laws to the Saeima.

3. Article 101 of the Republic of Latvia Satversme (henceforth – the Satversme) establishes: ”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.

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”.

4. On June 4, 1997 the Republic of Latvia Saeima ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). It is in effect in the Republic of Latvia since June 13, 1997.

Article 3 of the First Protocol of the Convention determines that ”the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of people in the choice of the legislature”.

In its turn Article 14 of the Convention establishes that enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground.

5. **The submitter of the claim** contests 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”” (hereinafter – the impugned act), as they hold that it is at variance with Article 101 of the Satversme, Article 14 of the Convention and Article 3 of its First Protocol.

   It is pointed out in the claim that the impugned act was adopted in haste. The Saeima, when adopting the impugned act, has not defined the legitimate aim of the restrictions for the former SSC employees, has not motivated the necessity of the established restrictions in a democratic society and has not assessed proportionality of the restrictions.

   The submitter of the claim holds that the restrictions for the former SSC employees (for 20 years to use the fact of possible collaboration, incorporated into the impugned act, in legal relations against the person) does not comply with the passive election right, namely, with the right of the citizen to be elected in the Saeima or the local authority Dome (the Council). Elections shall be general, i.e., the right to vote and be elected shall be secured without discrimination on any ground.

   Besides, the viewpoint that the restriction refers also to the right of holding a position in the civil service, is expressed in the claim. The submitter of the claim holds that when adopting the impugned act, validity of the restrictions has not been assessed and general equality principle, in accordance with which every citizen has the right to hold a position in civil service, has not been observed. By generalizing restrictions and attributing them to several sectors essential violation of the fundamental rights of an individual occurs, which is not proportionate to public benefit.

   At the Court session the representative of the submitter of the claim – the Saeima deputy Aleksandrs Bartaševičs additionally pointed out that Article 2 of the impugned act ”does not require submission of the amendments of particular laws with a purpose to enforce the results of the assessment *de iure* in Latvian legislature”, and stressed that the assessment, elaborated by the Cabinet of Ministers, would not be reviewed by the Saeima on its merit, because the Rules of Procedure of the Saeima do not regulate the procedure of review of the assessment by the Cabinet of Ministers.

A.Bartaševičs expressed the viewpoint that the possibility for a person to protect his/her honor and dignity is secured not only by the SSC Document Law (under Articles 14 and 15) but also by legal norms of Chapter 37 of the Civil Procedure Law on establishing legal facts, which allow to determine the fact of collaboration of the person with SSC.

Simultaneously A.Bartaševičs indicated that restrictions for the former SSC employees to hold certain positions might exist (e.g. in the Law "On the State Secret" or the Law "On the State Security Institutions") .

6. **The Saeima – the institution, which has passed the impugned act –** in its written reply, indicates that one of the aims of the SSC Document Law has been to get to know and give the possibility to assess collaboration of individuals with the State Security Committee. Articles 14 and 15 of the above Law to their mind determine the procedure under which the fact of collaboration with the SSC is established.

   The Saeima holds that in case if the impugned act had not been adopted then beginning from June 3, 2004 it would be impossible to establish the fact of collaboration of a person with the SSC and the fact would not be used in legal relations against this person. Articles 14 and 15 of the SSC Document Law would lose effect.

   The Saeima points out that by supplementing the Transitional Provisions of the SSC Document Law with Item 7 a certain period of time was determined, in which all the restrictions, included in all the laws with regard to persons, who had collaborated with the SSC, shall be thoroughly assessed. Extension of the term for ten more years shall refer only to those laws, in which the established restrictions will be acknowledged as necessary and well-grounded.

   The Saeima holds that the impugned norms are proportionate to the legitimate aim – state security and individualized statement of the fact about collaboration with the SSC. A specific court process in which the degree of collaboration of the person is thoroughly assessed is envisaged in Articles 14 and 15 of the SSC Document Law, and a person – if he/she is of the opinion that he/she has not actively and conscientiously collaborated with the SSC - has the possibility of protecting his/her rights at the court.

   At the Court session Gunārs Kusiņš – the head of the Legal Affairs Bureau, the authorized representative of the Saeima –additionally pointed out that the submitter of the claim had not within the framework of the matter to be reviewed contested the restrictions, included in the specific laws but only the Amendments to SSC Document Law. To determine proportionality of the restrictions, incorporated in the specific

laws, compliance of every single restriction, included in such a specific law, with the Satversme shall be assessed.

G.Kusiņš stressed that two mutually connected legal norms are at the basis of the impugned act. On the one hand, it is envisaged to prolong the limitation period for establishing the fact of collaboration for ten more years; on the other hand this term refers only to those sectors of legal relations, which concern interests of national security and territorial integrity of Latvia. Besides, when elaborating the draft of the impugned act, several experts were invited to express their viewpoint and they stated that restrictions in some laws should be abrogated, however in others – should be only specified.

G.Kusiņš points out that the aim of the impugned act has been to prolong the period of restrictions in the sectors of legal relations, which are connected with national security interests and territorial integrity of Latvia. He acknowledged that similar restrictions might be deleted from some laws, but stressed that in other laws, e.g., "The Law on the State Secret", the above restrictions should be maintained.

7. **The lecturer of the Riga Graduate School of Law Mārtiņš Mits** in his conclusion points out that after the end of the period, determined in the SSC Document Law, there will be no possibility to establish the fact of possible collaboration and exert influence on legal relations of a person. Therefore Article 17 of the SSC Document Law shall be assessed as being read in conjunction with the particular restrictions, which are established in the specific laws.

   The specific laws determine restrictions to standing for elections and participation in the activities of the local governments and the Saeima as well as to hold positions in the State Administration and law enforcement institutions.

   The legitimate aim of the restriction to hold a position in the State Administration, which is provided for by the specific law, is to protect the democratic structure of the State, national security and the territorial integrity of Latvia. When assessing the proportionality of the legitimate aim and the means, chosen to enact it, M.Mits concludes that with "the mechanism, set out in the legislature at the present moment, it is not possible to value the link between the past activities of a person and threat to State interests, which may be connected with the State security if a person held a position of an official".

   M.Mits points out that the restrictions, included in the specific laws, which refer to the former SSC employees are formulated in an

ambiguous way and thus it is not possible to establish proportionality of the restriction with the legitimate aim in every particular case.

8. **The invited person – the State Human Rights Bureau (**henceforth – the SHRB) in its conclusion points out that Article 1 of the impugned act is at variance with Article 14 of the Convention if read in conjunction with Article 3 of its First Protocol, as a differentiated treatment to different citizen groups of Latvia as regards the right to being elected can be established. The Bureau states that the norm has a legitimate aim (the protection of the State security), however, the means, used to reach it, are not proportionate; as there is no reason to hold that the persons, who had collaborated with the SSC, when becoming deputies would be still able to threaten the security of the State.

   SHRB stresses that the right to hold a position in the State Service might be subject to stricter limitations than the right to be elected. However, legal restrictions may exist only if they have a legitimate aim and are proportionate. The legitimate aim is to preclude access of such persons to the State Service, who could use their authority, thus obtained, for threatening the State security and public order.

   SHRB holds that the restrictions determined in Latvian laws with regard to realization of state service are too extensive. Such restrictions could be determined with regard to the military service, service in the State security institutions and positions, which are connected with use or protection of the State secret.

   SHRB concludes that Article 1 of the impugned act, as far as it refers to the right of the person to be elected in the Parliament and hold a position in the State service is unconformable with Article 101 of the Satversme and Article 14 of the Convention as well as Article 3 of the First Protocol of the latter.

   At the Court session the authorized **representative of SHRB Anita Kovaļevska** additionally pointed out that it was difficult to assess the impugned act together with all the specific laws and detaching from them. She expressed the viewpoint that the best solution would be to make amendments to the specific laws and specify in which cases the above restrictions shall be maintained.

9. **The invited person – the Chief Procurator of the Rehabilitation and Special Service Iveta Mētele** pointed out that up to the present moment 290 cases have been initiated at the Procurator's Office and 213 of them have been forwarded to courts for establishing the existence or non-existence of conscious collaboration. In 60 examination cases the Procurator's Office has ruled that deliberate collaboration with the SSC

has taken place. But only in 10 matters the court has taken the decision that the fact of collaboration with the SSC is stated. 61 examination cases have been stopped in accordance with Item 14 of Article 14 of the SSC Document Law, namely, if the person to be examined admits the fact of collaboration and requests to stop the case.

I.Mētele stressed that persons, against whom examination cases have been initiated, most often admit the fact of collaboration.

I.Mētele pointed out that at the disposal of the Procurator's Office are only registration files and registers. Work of the Procurator's Office is made difficult because personal and office files of the former SSC employees are not accessible; they are in Russia and mutual legal assistance in the above cases is not rendered.

10. **The invited person – the Constitutional Defense Bureau Head of the Center for the Documentation of the Effects of Totalitarianism Indulis Zālīte** expressed the viewpoint that the documents at the disposal of the Center for the Documentation of the Effects of Totalitarianism, i.e., registration files without the signature of the agent, registers of the agents and just some operative cases, in which one can find the reports by the agents, but without the signatures of the agents, are not efficient evidence to establish the nature of collaboration of the agent and the fact whether the above collaboration has been conscious and secret. Therefore the Procurator's Office, when carrying out the process of examination, requires the Center for the Documentation of the Effects of Totalitarianism to forward the information at its disposal about the former SSC employees and compiles versatile information from the resources, accessible in Latvia.

    I.Zālīte expressed the viewpoint that "on its merit public risk of having an agent has been provided for by specific laws, which contain prohibitions, because collaboration in itself is already prohibition. It is prohibition to act in certain sectors".

11. **The invited person – the representative of the working group** for the assessment of the necessity and validity of the restrictions, determined by law as concerns SSC staff employees as well as SSC informers **Indra Gratkovska** at the Court session pointed out that the working group has considered all the laws, which provide for determination of restrictions to the former SSC employees as well as has listened to and compiled the viewpoints of those institutions, which are involved in enactment of the relevant laws. The working group is elaborating its conclusion, which – in accordance with the Rules of Procedure of the Cabinet of Ministers – is an internal legal act – an informational report.

Indra Gratkovska pointed out that the informational report has not been finished yet and that it was not the duty of the working group to elaborate the draft amendments to the specific laws and submit them either to the Cabinet of Ministers or to the Saeima. Besides, I.Gratkovska indicated that the Minister of Justice, when establishing imperfections of any law (unconformity with the Satversme or international agreements) experiences the right to express a motion on the needed amendments to the law.

A concluding part

12. The State power of the Republic of Latvia was renewed on the basis of the constitutional Law " On the Republic of Latvia status as a State", which was adopted on August 21, 1991. The process of the renewal of the State began with complete takeover of power under the control of the State of Latvia and termination of the activities of the USSR structures in the territory of Latvia. It was necessary to act to terminate the activities of the Latvian communist party and takeover its properties, liquidate the Prosecutor's Office of the Latvian SSR and the State Security Committee

13. On August 24, 1991 the Supreme Council of the Latvian Republic passed the Law "On the Termination of the Activities of the USSR State Security Institutions in the Republic of Latvia", in which it was stated that the activities of the USSR State Security Institutions and that of their structural units, also the Latvian SSR State Security Committee in the territory of Latvia shall be declared as criminal and aimed against the interests of the Latvian nation.

13.1. 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.

Resolution 1096 (1996) of the Parliamentary Assembly of the European Council on Measures to Dismantle the Heritage of Former Communist Totalitarian Systems (henceforth – Resolution) summarizes the heritage of the post-socialist states, obtained in overcoming the effects of the old regime and transition to a democratic state. It is stated in the Resolution that some states have found it necessary to introduce administrative measures, such as lustration or decommunisation with regard to persons, who during the former communist totalitarian regime held high positions and supported the regime. The aim of

these measures is to exclude persons from exercising governmental power, if the cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in the past and have no interest or motivation to make the transition to them now. Besides it is stressed in the Resolution that in general these measures can be compatible with a democratic state under the rule of law, if several criteria are met. (*see Items 11 and 12 of the Resolution).*

On October 20, 1992 the Law ”On Elections for the Fifth Saeima” was passed, and Article 21 of it inter alia determined: ” any citizen of Latvia may be nominated as a candidate […] if he/she has signed a statement, according to the procedure stipulated by the Central Election Committee, which states that he/she has not been or is not presently a regular staff or contractual employee of the USSR or Latvian SSR State Security Committee, the USSR Defense Ministry, Russia’s (USSR’s legal successor) and any other state security services, or army intelligence or counter-intelligence, as well as an agent or resident of these establishments or a holder of an apartment used for conspirative meetings. This statement must be attached to the candidate list”.

However, during the process of application of the Law ” On Elections for the Fifth Saeima” its drawbacks were discovered. After the Fifth Saeima coming together the Mandate and Submission Committee received the task of requesting from the Committee of Inquiry of the Crimes of the Totalitarian Regime materials on collaboration of the Saeima deputies with the State Security Committee. When examining these materials it was established that five Saeima deputies have possibly collaborated with the SSC.

Therefore on April 28, 1994 the Saeima adopted the decision in which it was indicated that ” authenticity of documents by the Agency of the Latvian SSR State Security Committee alone does not create a sufficient basis for the conclusion on the fact of conscious, secret collaboration of the deputies G.Andrejevs, E.Inkēns, A.Kreituss, R.Milbergs and A.Siliņš with the above organization” and that elaboration and passing of the draft Law on SSC Documents shall be sped up; so that the law might be used for establishing of the fact of collaboration.

It meant that a special procedure for establishing of the fact on collaboration with the SSC was needed, which would determine concrete duties and rights for the relevant investigation institutions.

13.2. 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” was passed on May 19, 1994 and it took effect on June 3, 1994.

The purpose of the Law was to ensure preservation of documents of the former LSSR State Security Committee as a unitary complex of historical documents in the state possession and establish the procedure for usage of the SSC documents, as well as to enable enumeration and assessment of individual persons' collaboration with the SSC and to enable political, legal and moral rehabilitation of persons repressed, persecuted and spied out by the SSC. The SSC Document Law defines such concepts as "SSC Documents", "SSC Employees" and "informers", as well as provides for the procedure under which SSC documents shall be used as well as determines the specific procedure for establishing the fact of collaboration.

14. Taking into consideration the political situation of that time, historical assessment and the degree of democratic development of the State the legislator envisaged limitation period for the fact of collaboration with the SSC, establishing that "after 10 years from this Law taking effect, statement of the fact of collaboration with the SSC under the procedure established by Articles 14 and 15 of this Law shall not be permitted and his/her possible collaboration with the SSC shall not be used in legal relations against this person". It meant that in separate sectors of legal relations restrictions still might be established for persons, who had collaborated with the SSC (former SSC employees, informers, agents, residents, holders of conspirative apartments and trustees). Thus the SSC Law itself did not restrict the rights of the persons to hold certain positions. It only created preconditions for determining such restrictions as well as provided for a specific procedure of establishing the fact of collaboration. Simultaneously the SSC Document Law expressed the resolution of the legislator to abrogate the established restrictions after a certain period of time.

15. Restrictions to persons, who had collaborated with the SSC were provided for in several specific Laws: the Law " On Judicial Power", the Citizenship Law; the Saeima Election Law; the City Dome, District Council and Rural District Council Election Law; the State Civil Service Law; the Mandatory State Service Law; the Diplomatic and Consular Service Law; the State Control Law; the Law "On the State Revenue Service"; the Law "On the State Secret", Fire Resistance Law, Public Procurator's Office Law, the State Security Institutions Law and other laws.

15.1. These restrictions were not incorporated in the Laws simultaneously but gradually. For example the restriction for persons, who had collaborated with the SSC, to become candidates for a Judge was included in the Law "On Judicial Power" (Section 55, Item 5) by June 15, 1994 Law "Amendments to the Law "On Judicial Power"". In the City Dome, District Council and Rural District Council Election Law the restriction for the former SSC staff employees to become candidates for the Dome (Council) elections was

determined by November 6, 1996 Law ”Amendments to the City Dome, District Council and Rural District Council Election Law”. Similar restrictions in the Saeima Election Law were incorporated on March 26, 1998. On September 7, 2000 was passed the State Civil Service Law, which took effect on January 1, 2001 and its Sections 7 and 8 determined restrictions for the former staff employees of the SSC to become candidates for a civil service position. In its turn in the Corruption Prevention Law a similar restriction was included only on January 27, 2005 (it is in effect since March 1, 2005). Thus in each particular case the legislator, when incorporating restrictions for persons, who had collaborated with the SSC, in a specific law has assessed the necessity of the above restrictions in the relevant sector of legal relations.

15.2. Besides, these restrictions, both on their volume and contents are different in different laws. For example, in the Law ”On Judicial Power” it is established that a candidate for a judge may not be a person who is or has been employed in staff positions or as supernumeraries of the State Security Committee of the USSR or the Latvian SSR, the Ministry of Defense of the USSR of the USSR, or the State Security Service, army intelligence service or counter-intelligence service of Russia or another state, or as an agent, resident or safehouse keeper of the aforementioned institutions. In its turn it is determined in the Saeima Election Law that persons, who are or have been staff employees of the former USSR, Latvian SSR or any other state Security Service, army intelligence or counter-intelligence are not to be included in the candidate lists and are not eligible to the Saeima. In accordance with Article 11, Item 4, Sub-Item ”h” each candidate has to sign a statement about collaboration or non-collaboration with the SSC (supernumerary agent, agent, resident or holder of an apartment for conspirate meetings). Whereas in the European Parliament Election Law is included only the requirement to attach to the candidate list an information signed by the candidate, in which it is indicated whether the particular person is or has been staff employee of the SSC and whether it has collaborated with it.

Thus, the legislator, when establishing restrictions in different sectors of legal relations, has determined a differentiated approach.

16. The period, provided for in the SSC Law would have expired on June 4, 2004. However, the legislator extended it for ten more years, establishing: ”After 20 years from the date of this Law taking effect, statement of the fact of collaboration with the SSC under the procedure established by Articles 14 and 15 of this Law shall not be permitted and his/her possible collaboration with the SSC shall not be used against this person”. Thus, the restrictions for the persons, who have collaborated with the SSC are determined up to June 3, 2014.

17. On August 15, 2000 the Constitutional Court reviewed matter No. 2000-03-01 ”On the Compliance of Items 5 and 6 of the Saeima Election Law and Items 5 and 6 of the City Dome, Region Dome and Rural Council

Election Law with Articles 89 and 101 of the Satversme, 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. The Constitutional Court within the framework of the above case assessed the restrictions to passive election rights, incorporated in the Saeima Election Law and the City Dome, Region Dome and Rural Council Election Law. These restrictions were assessed as being read in conjunction with Article 17 of the SSC Document Law, which determined a ten year long limitation period. It is concluded in the Judgment that establishment of the above restrictions had a legitimate aim – "protection of the democratic structure of the State, national safety and territorial integrity of Latvia" (*the Constitutional Court August 30, 2000 Judgment in case No. 2000-03-01, Item 6).*

Besides, the Constitutional Court stressed that " the legislator, periodically evaluating the political situation in the State as well as the necessity and validity of the restrictions, shall take the decision on determining the period of the restrictions included in the impugned norms, as such restrictions to the passive election rights may last only for a certain period of time" (*the Constitutional Court August 30, 2000 Judgment in Case No. 2000-03-01, Item 7).* However, the Saeima, when rejecting the propositions on the Amendments to the Election Laws by the deputies of the opposition, has not assessed the above restrictions on their essence before the end of the limitation period (*see Volume 2, p.69 of the case).*

However, when adopting the European Parliament Election Law, the legislator was guided by the conclusions, included in the Constitutional Court Judgment and has not provided for restrictions to the passive election rights for persons, who have collaborated with the SSC.

As all the Latvian Election Laws (the Saeima Election Law, the City Dome, Region Dome and Rural Council Election Law and European Parliament Election Law) are based on equal principles, the restrictions, incorporated in them shall be thoroughly considered and substantiated.

18. It follows from the annotation of the draft of the impugned act that the Saeima has partially taken into consideration the above Judgment of the Constitutional Court and – when passing the impugned act – has charged the Cabinet of Ministers with the task of assessing the necessity and substantiation of the restrictions determined for SSC staff and supernumerary employees as well as SSC informers till June 1, 2005. It was established that the Cabinet of Ministers would submit the assessment of the restrictions, included in the specific Laws, to the Saeima.

On September 6, 2004 the Ministry of Justice passed Resolution No. 1-1/309 ” On the Working Group for Evaluation of the Requirement and Substantiation of the Restrictions Determined for SSC Staff and Supernumerary Employees as well as SSC Informers”. In accordance with Item 2 of the above Resolution the working group shall submit the draft of the required legal acts to the Minister of Justice till April 1, 2005.

19. As can be seen from the materials in the case both the representative of the Cabinet of Ministers at international human rights institutions and the representatives of the Chancellery of the State President, Procurator General’s Office, the Constitutional Defense Bureau, Ministry of Justice, State Data Inspection, Ministry for the Interior, Security Police, Riga Graduate School of Law and Center for the Documentation of the Effects of Totalitarianism participated at the Session of the Saeima Legal Affairs Committee, in which the impugned act was discussed (*see Volume I , pp. 156 -161 of the case).*

Taking into consideration the viewpoints of the above experts, at the session of the Legal Affairs Committee was established that the 10 year limitations period as a mechanical distinction, which was provided for in 1994, was ungrounded, as it is just one of the circumstances, which should be taken into consideration when assessing the requirement for the restrictions. Several experts have inferred that specifying of the above restrictions would be much more important (*see Volume 2, p. 96 of the case).* M. Mits has also stressed that the legislator has formulated the restrictions for the former SSC employees to participate in certain legal relations in a common way and as the result of the above it is not possible in every particular case to establish proportionality of the restrictions with their aim – to protect the democratic structure, national security and territorial integrity of Latvia.

The European Court of Human Rights (henceforth – ECHR) in case *Sidabras and Džiautas* assessing the restrictions, existing in Lithuania for persons, who have collaborated with the USSR State Security Committee, to hold certain positions, has concluded that the restrictions are formulated in the Law in such an ambiguous way that it is impossible to ascertain any reasonable link between the positions concerned and the legitimate aims sought by the ban on holding those positions. Therefore ”such a legislative scheme must be considered to lack the necessary safeguards for avoiding discrimination and for guaranteeing an adequate and appropriate judicial control of the imposition of such restrictions” (*ECHR July 27, 2004 Judgment in case Sidabras and Džiautas v. Lithuania, Item 59).*

On January 27, 1992 Latvia acceded to Convention No.111 of the International Labor Organization ”On Discrimination with Regard to Employment and Occupations”. In 2001 the Committee of Experts on the Application of Conventions and Recommendations (henceforth – the Expert Committee) evaluated the restrictions, existing in Latvia, which have been provided for in the Civil Service Law and the Law ”On Police” in the context of Convention No. 111. The Expert Committee concluded that requirements of a political nature can be set for a particular job but they should be limited to the characteristics of a particular post and be in proportion to its labour requirements; bur the above established exclusions under examination apply broadly to the entire civil service and police rather than to specific jobs, functions or tasks. (*see: Committee of Experts on the Application of Conventions and Recommendations: Individual Observation concerning Convention No.111, Discrimination [Employment and Occupation], 1998: Latvia, Published in 2002, Items 6 and 7; http://www.ilo.org/ilolex/english/newcountryframeE.htm).*

20. The submitter of the claim requests to assess the conformity of the impugned act with Article 101 of the Satversme, Article 14 of the Convention and Article 3 of its First Protocol. In Article 101 of the Satversme are incorporated concrete fundamental human rights, namely, the right of every citizen of Latvia, 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. The formulation of Article 3 of the First Protocol of the Convention determines the duty of the Convention Member States – the High Contracting Parties – to hold free elections by secret ballot; however, in the practice of the European Court of Human Rights it has been established that the Convention guarantees also subjective election rights (*see: ECHR March 2, 1987 Judgment in case Mathieu-Mohin and Clerfayt v. Belgium, Item 51).* In its turn Article 14 of the Convention establishes that enactment of the rights and freedoms set forth in it shall be secured without any discrimination.

To assess the conformity of the impugned act with the above fundamental rights, one has to establish whether any restrictions of these rights are included within its norms.

21. One of the aims of the adoption of the impugned act was to establish a period in which the restrictions, set forth in the specific laws, to persons, who had collaborated with the SSC, would be assessed and –after assessment - to abrogate those restrictions, which were not any more imperative. Hence, it is possible to state that prolongation of the period for ten more years will refer only to those laws, restrictions to which the Saeima will consider as imperative and substantiated.

In Article 2 of the impugned act is included the delegation to the Cabinet of Ministers to assess till June 1, 2005 the requirement and substantiation of the restrictions to SSC staff and supernumerary employees as well as to SSC informers set forth in law. Furthermore, the Cabinet of Ministers has to submit the assessment of the restrictions, provided for by law, to the Saeima. When analyzing the contents of the above legal norm, it can be deduced that concrete restrictions of fundamental rights are not included in it. Thus this norm is not and cannot be at variance with Article 101 of the Satversme, Article 14 of the Convention and Article 3 of its First Protocol.

22. Thus, it shall be established whether Article 1 of the impugned act (Article 17 of the SSC Document Law) includes any restriction of the human rights.

When analyzing Article 1 of the impugned act it can be seen that it in fact includes two legal norms to which similar limitation period is applied, namely – *after 20 years from the date of this Law taking effect*
a) statement of the fact of collaboration with the SSC under the procedure established by Articles 14 and 15 of this Law shall not be permitted and
b) his/her (person's) possible collaboration with the SSC shall not be used in legal relations against this person.

23. The first norm, when establishing limitation period for statement of the fact of collaboration, simultaneously – in accordance with Article 12 of the SSC Document Law - envisages the possibility of contesting the fact of collaboration with the SSC.

Article 12 of the SSC Document Law establishes: "(1) any person may request, in writing, a reference from the Center for the Documentation of the Effects of Totalitarianism, on whether at its disposal, in the State Archive or other state depositories, any documents of the SSC about this person are kept. The Center shall give, within a month, a reply on the documents at its disposal; (2) if the reply is affirmative, the person shall be entitled to get acquainted with these documents, as far as it does not affect the interests of a third person, to receive dockets from them, as well as to apply to the public procurator's office with a submission on statement of the fact of collaboration under the procedure established by Article 14 of this Law."

Thus the person himself/herself may participate in contesting of the fact of collaboration with the SSC, so that in future the fact would not be used in legal relations against this person. If the limitation period were not extended, then it would not be possible to establish the fact of collaboration of the person with the SSC after June 3, 2004. Thus the

right of the person to rehabilitate himself/herself and protect his/her honor and dignity would be violated and – simultaneously- Articles 14 and 15 of the SSC Document Law would lose validity.

24. Approval of the fact that persons have actively made use of the rights, established in Article 12 of the SSC Document Law and applied to the Procurator's Office of Rehabilitation and Special Services Matters with a claim on statement of the fact of collaboration, can be obtained from the materials in case and those of the Court session.

At the Court session the Chief Procurator of the Procurator's Office of Rehabilitation and Special Services Matters I.Mētele pointed out that in the period from June 2, 1994 290 examination cases on the statement of the fact of collaboration have been initiated; 213 cases have been forwarded to courts; in 60 matters the Procurator's Office has concluded that conscious collaboration with the SSC has taken place; in 10 examination cases the fact of conscious collaboration with the SSC has been established by a court judgment; 61 cases have been stopped as the person to be examined admitted the fact of collaboration and requested to stop the case. About 30 cases are under review of the Procurator's Office and have not been adjudicated by courts. The Chief Procurator I.Mētele additionally pointed out that the greatest number of cases has been initiated on the basis of applications by the persons themselves.

As the period for statement of the fact of collaboration with the SSC was prolonged, all the persons, who have commenced the process for establishing the fact of collaboration in accordance with Article 14 of the SSC Document Law or who hold that they have not collaborated with the SSC will have the possibility of contesting the fact of collaboration and protecting their rights. For example, persons, who would want to become candidates for the elections of the European Parliament and who have received a docket about the possible collaboration with the SSC from the Center for the Documentation of the Effects of Totalitarianism, will not any more be able to prove that they have not collaborated with the SSC.

25. In its turn the second norm, included in Article 17 allows for ten more years to use the fact of the possible collaboration with SSC in legal relations against the person. From the contents of the above norm follows that it *per se* does not include restrictions of the fundamental rights; as concrete restrictions are incorporated in the specific laws. Restrictions are established to passive election rights (e.g. the Saeima Election Law), the right to hold certain positions and be employed in the State Service (e.g. the Civil Service Law, the Law "On the Judicial Power", the Law "On Police" etc.), the right to acquire a certain legal status (Citizenship Law, Repatriation Law), the right to perform some

other activities [e.g. the Law on Financing of Political Organizations (Parties)]; besides, other restrictions with regard to access to state secret and determination of the length of insurance for calculation of the state pension.

25.1. The above restrictions may be applied to a person only if the fact of collaboration is established in accordance with the period, provided for in Article 17 of the SSC Document Law. After the end of the term establishing of the fact of possible collaboration would not be possible and it would not affect the legal relations of a person. Thus Article 1 of the impugned act shall be assessed as being read in conjunction with the particular restrictions, which are provided for in the specific laws.

However, the submitter of the claim has not contested any of the specific laws and has only implied to unconformity of the impugned act with the right to be elected and with the right of holding certain positions (just some of the positions) as well as the right to carry out duties in the State Service. At the Court session the submitter did not contest any of the special laws either, but contested only the fact that the prohibition for the former employees of the SSC to participate in certain legal relations will be in effect for ten more years.

25.2. To establish whether every concrete restriction complies with the Satversme and the Convention, one shall assess the norms of the particular specific laws, i.e., the compliance of cases on other laws, but not the impugned norms However, the Constitutional Court may initiate and review a case only if a claim, conformable with the requirements of the Constitutional Court Law, has been received.

Conformity of Article 1 of the impugned act with Article 101 of the Satversme, Article 14 of the Convention and Article 3 of its First Protocol may be assessed only as being read in conjunction with the relevant norms, included in the specific laws. The submitter of the application in his claim to the Constitutional Court has not requested it.

Thus, it is impossible to further assess the conformity of Article 1 of the impugned act with Article 101 of the Satversme , Article 3 of the First Protocol of the Convention as being read in conjunction with Article 14 of the Convention.

The substantive part

On the basis of Articles 30 – 32 of the Constitutional Court Law the Constitutional Court

hereby rules:

To declare 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”” as conformable with Article 1 of the Republic of Latvia Satversme, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of its First Protocol.

The Judgment is final and allowing of no appeal.
The Judgment was announced in Riga, on March 22, 2005.

The Chairman of the Court session Aivars Endziņš