THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, September 23, 2002

JUDGMENT
in the name of the Republic of Latvia

in case No. 2002 – 08 – 01

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session Aivars Endziņš, justices Anita Ušacka, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse and Ilze Skultāne,

Under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Paragraph 1 of Article 16, Article 17 (Paragraph 11 of the first part), Article 19^2 and 28^1 of the Constitutional Court Law

On the basis of the constitutional claims by Ilmārs Ančāns, Linards Strelēvics and Andris Rubins

Holding the proceedings in writing reviewed the case

”On the Compliance of Article 38 (the Second Sentence of its First Part) of the Saeima Election Law with Articles 6, 8, 91 and 116 of the Satversme”.

The establishing part

On June 9, 1922 the Republic of Latvia Constitutional Assembly adopted the Law on the Saeima Elections. This Law did not envisage electoral percentage threshold, which the candidates have to surmount to become the Saeima deputies.

On October 20, 1992, the Republic of Latvia Supreme Council passed the Law ” On the Elections of the 5th. Saeima”, envisaging to approximate the June 9,1922 Law on the Saeima Elections in a new wording. Article 51 was supplemented and the first sentence of part two of the Article was expressed in the following wording:” Those candidate lists with the same title which have received less than four per cent of the total votes cast throughout Latvia do not

participate in the distribution of the seats of deputies regardless whether the list with the same title was submitted in one or more electoral regions".

The elections of the 5th. Saeima took place on June 5 and 6 , 1993. 23 candidate lists were submitted; out of these - eight lists received the deputy mandates. All the other lists received less than four percent of the total votes.

On May 25, 1995 a new Saeima Election Law was passed. It took effect on June 7, 1995. The second sentence of the first part of Article 38 establishes: " The list of candidates that have gained less than five per cent of the total number of votes in the whole of Latvia regardless of the number of constituencies where their lists of candidates have been distributed, shall be excluded from the distribution of seats".

The 6th. Saeima elections took place on September 30 and October 1, 1995. The Central Election Committee accepted 19 candidate lists and nine lists received the deputy mandates. The other lists did not surmount the electoral threshold of 5 per cent. The 7th. Saeima elections took place on October 3, 1998. 21 candidate lists were registered but only 6 obtained the deputy mandates, because the other lists had received less than 5 per cent of the total number of votes.

Submitters of the constitutional claim (henceforth – the submitters) – Ilmārs Ančāns, Linards Strelēvics and Andris Rubins challenge the conformity of the Saeima Election Law Article 38 (the second sentence of its first part) with Articles 6, 8, 91 and 116 of the Republic of Latvia Satversme – the Constitution (henceforth – the Satversme). Ilmārs Ančāns and Andris Rubins in their claim state that Article 8 of the Satversme guarantees that all citizens of Latvia who enjoy full rights of citizenship and, who on Election Day have attained eighteen years of age shall be entitled to vote. In its turn Article 6 of the Satversme determines that the Saeima shall be elected in general, equal, direct and secret elections, based on proportional representation. The Satversme does not envisage that the electoral principles, enshrined in Article 6 of the Satversme may be restricted. Article 116 of the Satversme, which envisages what rights of persons may be subject to restrictions, does not name the election rights. At the same time the challenged norm determines such restrictions, as in the distribution of deputy mandates the votes of persons, cast for the lists, which have received less than 5 per cent of the total number, are not taken into consideration. The submitters of the claim hold that the elections are not general and equal, because a certain number of votes are not taken into consideration. Part of the voters with their cast voices do not succeed and are not proportionally represented at the Saeima. Votes of the above persons are added to those candidate lists, which have surmounted the 5 per cent electoral threshold, even though they have not voted for the lists. Thus the electors, who have voted for lists, which have received less than 5 per cent of the total votes, are discriminated and Article 91 of the Satversme is violated.

The submitters hold that the expression of the free will of the voters is not ensured. Article 25 of the International Covenant on Civil and Political Rights determines that the elections shall be general and equal and that the expression of the free will of the voters shall be ensured. If part of votes is not taken into consideration while distributing the Saeima deputy mandates, the voters are compelled to choose those candidate lists, which will receive more than 5 per cent of the total votes.

Linards Strelēvics in his constitutional claim also stresses that Article 6 of the Satversme has been violated. The principle of equality, mentioned in the Article, establishes that all the votes are equal and it can be achieved without determining the electoral threshold. If the threshold is determined, then the vote of a person for the list, which has not received 5 per cent of the total votes, becomes unequal, firstly, because it is not taken into consideration, i.e., it is equal to zero and secondly - because it is added to another vote, thus giving it double value.

Linards Strelēvics maintains that the challenged norm changes ”elections of proportional representation to elections of non-proportional elections”. The principle of proportionality manifests itself in two ways – firstly, the number of deputies to be elected in a certain district shall be proportional to the number of citizens, residing in it and having the right to vote, and secondly – by determining the number of the Saeima deputy mandates for each list, taking into consideration the number of votes for every list.

Linards Strelēvics in his claim points out that the challenged norm is illegal as it is not in compliance with the specific cases, named in Article 116 of the Satversme, when the human rights, also the voting right may be restricted . The viewpoint is expressed in the claim that the challenged norm ”agitates” against participation in the elections or ”deters” the electors from voting for the lists, backed by less than 5 per cent of the total number of voters.

After acquainting themselves with the case material, Linārs Ančāns and Linards Strelēvics in the written conclusion upheld their viewpoint.

The institution, which has passed the challenged act – the Saeima, in its written replies points out that the challenged norm is not unconformable with Articles 6, 8, 91 and 116.

The Saeima does not agree with the statement of the submitters that the challenged norm contradicts the principle of general elections, fixed in Article 6 of the Satversme. The Saeima holds that by the concept ”general elections” one shall understand that it is the principle, establishing that all the persons having the voting right, enjoy the constitutional right of taking part in the elections. One may not interpret the above concept as the right of every elector

to demand that the list, which has gained even one vote, receives also the parliament mandate. The demand, established in the Satversme, that the Saeima shall be composed of one hundred representatives of the people in an indirect way also means that candidates from the lists, which have received a small number of votes will not become the Saeima deputies.

It is stated in the written replies that the challenged norm is not at variance with the principle of equal elections, fixed in Article 6 of the Satversme. The concept ”equal elections” means that every elector has one vote and that all the votes are equal. The challenged norm does not change the above principle.

Saeima dismisses the statement by Linards Strelēvics that the votes of the minority electors are added to those lists, which have reached the threshold of 5 per cent as erroneous. The above statement is not based on the norms of the Saeima Election Law.

In the written replies it is stressed that the proportional election system allows small parties to become the Saeima members. The experience of the first four Saeimas shows that at that time the liberal election law allowed representatives of very many candidate lists to become the Saeima members. The lack of uniformity made hard or even impossible normal and efficient functioning of the Parliament; it was also one of the reasons of liquidation of the Latvian parliamentary system. When elaborating the Saeima Election Law, the historical experience was taken into consideration when determining that the list of candidates that have gained less than five per cent of the total number of votes in the whole Latvia, shall be excluded from the distribution of seats. The objective of this provision is to prevent excessive political ” splitting” of the Saeima and to ensure both - that the Saeima reflects the viewpoints of the voters and is able to work efficiently. Thus – the provision can be justified by the legitimate aim.

The Saeima explains that the so-called electoral threshold exists in several democratic states with a proportional election system (Sweden, Germany, etc.).

The Saeima does not agree with the viewpoint of the submitters that voting right may not be restricted by law. Article 6 of the Satversme, which determines the fundamental principles of elections, shall be read together with Articles 101, 116 and other Articles of the Satversme. Article 101 of the Satversme establishes that every citizen of Latvia has the right, as provided for by law, to participate in the activities of the State and of local government. This right is not absolute and the way of exercising it has to be determined by law. In the legal literature it is also acknowledged that the regulating authority of the legislator may be positive – the right of determining the contents of fundamental rights and negative – that of infringement of the above rights.

It is pointed out in the written reply that the challenged norm does not contradict with Article 91 of the Satversme as the voters do experience an equal right of voting for any candidate list and the candidate lists have the same provisions for ”participating” in elections .

The Saeima has not expressed a legal motivation on the compliance of the challenged norm with Article 8 of the Satversme.

The concluding part

There are five universally recognized election principles in the democratic states of the world. Elections have to be general, equal, free, secret and direct. The above five principles have been fixed both in international instruments and the national law of the states.

Article 21 of the Universal Declaration of Human Rights adopted on December 10, 1948 by the General Assembly of the United Nations Organization (henceforth – the Declaration) determines that ” the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. Thus democracy, when determining the state political, economic, social and cultural system, is based on the free expression of the will of the people. One of the most important forms of expressing the political will of the citizens is taking part in the parliament elections.

Since July 14, 1992, the International Covenant on Civil and Political Rights (henceforth – the Covenant) is in effect. Article 25 of the Covenant also guarantees the right of every citizen to vote and to be elected: ”Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: … to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and be held by secret ballot, guaranteeing the free expression of the will of the electors”.

Article 2 of the Covenant in its turn envisages guaranteeing the above right ”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”.

The states, which have acceded to the Covenant, shall ensure adoption of particular laws as well as undertake other activities to ensure that the rights guaranteed in the Covenant, among them also the voting right, are implemented.

Thus both – the Declaration and the Covenant determine that the elections shall be general, of equal suffrage, secret and periodic. The elections shall guarantee the free expression of the will of the electors.

November 4, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as well as its Protocols No. 1, 2 and 4 are effective in Latvia since June 27, 1997. Article 3 of the First Protocol reads as follows: ” 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 the people in the choice of the legislature”. Even though the formulation of the Article indicates that the Member states of the Convention – the high contracting parties – have the obligation of organizing free and secret elections, in the practice of the European Court of Human Rights it has been pointed out that the Convention guarantees also subjective election rights.

When reviewing the Mathieu- Mohin case (*see Judgment of March 2, 1987, Mathieu – Mohin and Clerfayt case),* the European Court of Human Rights has concluded that wording of Article 3 does not reflect any difference of substance from the other substantive clauses in the Convention and its Protocols. The reason for it would seem to lie rather in the desire to give greater solemnity to the commitment undertaken and in the fact that the primary obligation in the field concerned is not one of abstention or non-interference, as with the majority of the civil and political rights but one of adoption by the State of positive measures to ”hold” democratic elections. When implementing the election rights the states have a free choice.

Thus constitutions and laws determine the procedure of implementation of the five fundamental election principles.

In Latvia the Satversme and the laws regulate the election rights. Article 6 of the Satversme determines: ” the Saeima shall be elected in general, equal, direct and secret elections, based on proportional representation”.

The concept ”general elections” envisages that every person has the right to vote (the active election right) and the right to be elected (the passive election right). However, the above rights may be (and sometimes it is necessary to do so) restricted. The restrictions are connected with:

- the age of the person. i.e., the age from which to enjoy the active or passive right to elect has been determined;
- citizenship – only the State citizens are allowed to vote and may be elected in parliamentary elections;
- other circumstances like legally recognized persons incapacity to act, persons serving a sentence of imprisonment or persons who have committed a serious crime. In this case the restrictions shall be

determined by law, shall be proportional and have a justified legitimate aim.

Ungrounded is the viewpoint of the submitters – Ilmārs Ančāns and Andris Rubins , stating that the election rights may not be restricted if they have not been mentioned in Article 116 of the Satversme.

Article 8 of the Satversme establishes active election rights, and at the same time restricts them. The Article determines:" All citizens of Latvia who enjoy full rights of citizenship and who on Election Day have attained eighteen years of age shall be entitled to vote". Thus the Satversme itself envisages restrictions of the active election right, connected with full rights of citizenship – only the Latvian citizens may vote – and the age - only if the person is 18 years of age, he/she may vote.

The concept of full rights is specified in Article 2 of the Saeima Election Law, determining that " The following persons shall not be entitled to vote:

1) persons serving a sentence of imprisonment in penitentiaries;
2) persons suspected of or accused of a crime, or subject to trial, if they have been arrested for reasons of security;
3) persons whose incapacity to act has been legally recognized".

At the time of debating on and passing the Satversme, proposals to supplement the fundamental law with several articles on restrictions of the election right were expressed at the Constitutional Assembly. The Assembly rejected the above proposals. On October 11, 1921 at the Constitutional Assembly session the deputy Arveds Bergs substantiated the idea that restrictions of the election right should not be incorporated into Article 8 of the Satversme in the following way: " Only the main principles and the main provisions shall be enshrined in the Satversme articles. One shall avoid incorporating petty provisions without a principal meaning, because they mean just "technicalities". They have no place in the Satversme as the necessity to amend them, without changing the main principles, might arise. … It is not advisable to incorporate amendments to the Satversme – the Satversme has to be something solid and definite, to be amended very rarely" (Verbatim report of the Republic of Latvia Constitutional Assembly, Nr.17, p. 1574).

Thus the Constitutional Assembly, when adopting Article 8 of the Satversme has envisaged that the active election right may be restricted and that the restrictions shall be determined by law.

Election rights have not been included in Article 116 of the Satversme. It determines the cases when human rights may be encroached. However, one has to take into consideration that the 1922 Satversme was supplemented with Chapter 8 " The Human Rights" only in 1998. The legislator, when envisaging cases of restricting human rights in Article 116 has attributed them to the

fundamental human rights mentioned in Chapter 8. The fact, that election rights are not included in the Satversme Article 116 does not mean that the above rights may not be restricted. Articles 6, 8 and 116 of the Satversme shall be read together with those international human rights instruments to which Latvia has acceded.

To establish the contents of the norms of human rights included in the Satversme, they should be interpreted in compliance with the practice of application of international norms of human rights. The practice of the European Court of Human Rights is mandatory when interpreting the norms of the Convention. This practice shall be used also when interpreting the respective norms of the Satversme (*see August 30, 2000 Constitutional Court Judgment in case No. 2000 – 03 – 01).*

Article 25 of the Covenant envisages the right to vote without unreasonable restrictions, whereas reasonable restrictions are admissible. The principle of general elections is not an absolute, but sooner a relative principle, which depends on the interpretation of the concept ”democratic participation” (*see Manfred Nowak. UN Covenant on Civil and political rights: CCPR Commentary. Kiel am Rhein, Starasbourg, Arlington, N.P.Engel, 1993, p. 445).*

In the Commentary of the Universal Declaration of Human Rights ”The right to participate in public affairs, voting rights and the right of equal access to public service ” it is also stated that the rights of the citizens, guaranteed by Article 25 ” may not be restricted for some time or even deprived with an exception of cases when the restriction has been determined by law, is objective and reasonable (*The right to participate in public affairs, voting rights and the right of equal access to public service /Art.25/: 12/07/96, CCPR General comment).*

The European Court of Human Rights, when interpreting Article 3 of the Convention 1st. Protocol, has concluded that the election rights are not absolute and may be restricted. However, one has to satisfy oneself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim and that the means employed are not disproportionate. The most important thing is that the above conditions ”ensure the free expression of the opinion of the people” (*see March 2, 1987 European Court of Human Rights Judgment in Mathieu- Mohin and Clerfayt case).*

The Constitutional Court in its August 30, 2000 Judgment in case No. 2000 – 03 – 01 has concluded that the passive election right may be restricted if the restrictions have been determined by the law, are justified by a legitimate aim and are needed in a democratic society. The restrictions have to be proportional to the aim. The Constitutional Court has no reason to hold that the above approach might not be attributed to the active election right.

Thus, by interpreting Article 8 of the Satversme historically as well as in a systemic way – as read together with Article 6 and 116 of the Satversme, Article 25 of the Covenant and Article 3 of the Convention First Protocol- the Constitutional Court concludes that the voting or election rights may be restricted. The restrictions shall be :

1) determined by the law;
2) justified by a legitimate aim envisaged in Article 116 of the Satversme: the rights of other people, the democratic structure of the State, the public safety, welfare and morals;
3) proportional to the aim.

Ungrounded is the viewpoint of the submitters that determining of the 5 per cent threshold is a limitation of the election right and if the above threshold has been established, elections are not general. The challenged norm regulates the activities of the Central Election Commission, determining the distribution of deputy mandates among the candidate lists, but it does not affect the subjective rights of the electors.

Thus the challenged norm does not restrict the active election right and is not at variance with the principle of general elections, enshrined in Article 6 of the Satversme.

The principle of equal elections envisages that every elector has one vote or an equal number of votes, the number of the deputies to be elected is equally distributed among the election districts and the opportunities of all the political parties and candidates are equal.

In Latvia every elector has one vote. The principle of equal elections means that all the votes of the electors are of equal value.

However, the principle of equality does not mean that all the candidate lists have to gain the same number of votes to receive a deputy mandate. It suffices if the possibility of the election candidate lists for receiving deputy mandate in the Saeima is equal. And the possibility is equal if the attitude of the state institutions to all the candidate lists is neutral. It refers to the process of canvassing, access to mass media as well as public financing of the parties and the canvassing period.

Equal possibilities may be implemented not only by equal attitude to all parties, not depending on parliamentary representation or support of the electorate, but also by taking into consideration that the attitude towards parties depends on the results of the elections.

Neither the Declaration, the Covenant and the Convention, nor other international instruments assign the obligation of choosing just one and specific election system (proportional, majority or mixed).

Thus Article 3 of the Convention First Protocol " provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any "obligation to introduce a specific system, such as proportional representation or majority voting with one or two ballots"" (March 2, 1987 European Court of Human Rights Judgment in Mathieu – Mohin and Clerfayt case).

Thus the State Constitution and the laws determine the election system – proportional, majority or mixed.

In majority voting the candidate or the candidate lists, which has received the most number of votes in the election district, wins. Only those votes, polled for the candidates, who have received the greatest number of votes are taken into consideration, the other votes do not affect the outcome of the elections.

Article 6 of the Satversme envisages that there is the proportional election system in Latvia. At the basis of the proportional election system is the concept on the necessity of proportional representation of political forces. A political party (a candidate list) receives such a number of deputy mandates, which conforms to the number of electors voting for this party (list). Approximately the same number of electors' votes is needed to elect the Parliament deputy. The proportional election system – in difference from the majority voting – guarantees the possibility of getting into the Parliament also for the political forces with a smaller support of the electors.

If there is a proportional election system without the percentage threshold, then a great number of political parties get into the Parliament. Many of the parties are represented by some or even one deputy.

June 9, 1922 Law on the Saeima Elections did not envisage the above threshold. The first four Saeimas were elected on the basis of this Law. Taking into consideration that there were only one hundred deputy mandates, a comparatively great number of parties became the Parliament members: in the first Saeima – 20 lists; in the second – 25 lists; in the third – 22 lists and in the fourth – 20 lists (*see Latvijas Vēstnesis No.243, October 20, 1925; No. 250, November 3, 1928; No.246, November 2, 1931; The results of the Republic of Latvia Saeima elections. Preface and wording by M.Skujenieks. Riga, the State statistics Board, 1923, page 10).* It can be seen that the first four Saeimas were lacking uniformity. And it was the result of the liberal Election Law. The fact endangered political stability and even caused government crises (*see Ādolfs*

Šilde. The History of Latvia: 1914-1940. Stockholm, Daugava, 1976, page 397).

The deputy Oto Nonācs assessed the situation in the following way: ”Beginning from the times of the Constitutional Assembly and even earlier – at the time of the National Council in all our Parliaments and all our legislative institutions the most harmful thing has been lack of uniformity and their varied composition” (*Verbatim Report of the Republic of Latvia 2nd. Saeima third session, Riga, 1926, 403 column).*

The Constitutional Court agrees to the viewpoint voiced in the written replies that the four first Saeimas lacked uniformity and it made hard or even impossible normal and effective performance of the Parliament and that it has been one of the reasons of liquidation of the parliamentary system of Latvia.

In 1933 and the beginning of 1934 Latvia was struck by the parliamentary crisis. The governments were frequently changed and, taking into consideration the lack of uniformity of the Saeima, it was difficult to create the government. ”The long-standing governmental crises caused popular dislike as the process of creation of a new government always ran into obstacles and made the supporters of a new government to promise the moon, and that did not always meet the requirements of the State” (*Ādolfs Šilde, page 581).*

As there was the proposal to amend the Satversme, several projects of the Amendments were elaborated. ”Those who opposed to the amendments to the Satversme, were ready to consent to the amendments to the Election Law. There were different proposals… The faction of the Christian farmers and Catholics wanted to succeed in alteration of the Election Law so that only those groups and parties, which had received not less than three deputy mandates were represented in the Saeima. Social democrats advised the minimum of 5 deputies” (*Ādolfs Šilde, page 571).*

It can be seen that already in 1934 the way to diminish the number of the political forces to be represented at the Saeima was being looked for with the objective of creating a more coordinated and capable Parliament. One of the proposals was the determination of the election percentage threshold. However, the plans were not implemented as the May 15, 1934 coup interrupted the activities of the Saeima.

In 1992, when making the decision on approximation of the 1922 Law on the Saeima elections to the elections of the 5th. Saeima, the Supreme Council took the historical experience into consideration. Thus it was determined that the candidate lists, which had received less than 4 per cent of the total number of votes in the whole of Latvia shall be excluded from the distribution of seats.

On May 20, 1992 at the plenary session of the Supreme Council, when the draft law was discussed in its first reading, the deputy Dzintars Ābiķis said: " First of all we should acquaint ourselves with the sad historical experience. What was the result of the old election law in 1930-ies? The coup. Therefore everyone, sitting in this hall shall firstly think about the state and only after that about the letter of the law. All the politicians, who remained alive after 1940 and who have analyzed political processes in Latvia, in their memoirs criticize the Saeima Election Law, as it was one of the prerequisites why Ulmanis came into power and the authoritarian regime was established". (*Verbatim report of the May 20, 1992 Saeima session).*

Well-grounded is the viewpoint, expressed in the written replies, that the percentage threshold is necessary to avert political "crushing" of the Saeima and ensure creation of the Saeima, which is capable to work , at the same time reflecting the viewpoint of the voters.

The German Constitutional law also stresses that – "if the principle of exact proportional representation as the reflection of all popular political views were carried to its logical extreme, parliament might be split into many small groups, which would make it more difficult or even impossible to form a majority" (*see Donald P.Kommers. The Constitutional Jurisprudence of the Federal Republic of Germany. Durham and London. Duke University Press, 1997, p. 187).*

The Constitutional Court holds that determination of the election threshold is justified by the necessity of establishing the parliament, which is capable to act effectively, when carrying out the functions assigned to it. The number of political parties has to make it possible to design a capable and stable Cabinet of Ministers, which enjoys the confidence of the Saeima majority.

Parliament, elected in plurality system elections, reflects the spectrum of the state political forces in a lesser degree that the parliament, which is elected in proportional elections, even if there exists a percentage threshold. Therefore deviation from the proportional election system as well as determination of the percentage threshold shall not be regarded as violation of the principle of equality.

The European Court of Human Rights also has established; " Electoral systems seek to fulfill objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially - apart from freedom of expression (already protected under Article 10 of the Convention)- the principle of equality of treatment of all citizens in the exercise of the right to vote and their right to stand for election. It does not

follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. Thus no electoral system can eliminate ”wasted votes” (*March 2, 1987 Judgment of the European Court of Human Rights in Mathieu- Mohin and Clerfayt case).*

The Saeima in its written replies reasonably disproves the Statement of Linards Strelēvics that the voting lists, which have remained in minority, are added to the lists, which have surpassed the 5 percent threshold. This Statement is not based on the legal Saeima election norms. The challenged norm establishes that ”the list of candidates that have gained less than five percent of the total number of votes in the whole of Latvia shall be excluded from the distribution of seats”. Thus the votes for the above lists are not taken into account, but they are not added to other lists.

Determination of the election percentage threshold is a political decision and it is within the competence of the legislator. Several principles of a law-based state, also the principle of separation of power, follow from the concept of the democratic state, incorporated into Article 1 of the Satversme (Constitution). The legislative power of the state of Latvia is vested in the people of Latvia and the Saeima. Thus, the Saeima is authorized to reach the decision on the electoral threshold. The threshold itself and the percentage are not envisaged by the Constitution, it is determined by the law. In Latvia it has been determined by the Saeima Election Law.

The submitters have not substantiated that the threshold of just 5 per cent is at variance with Articles 6, 8, 91 and 116 of the Satversme. They have not pointed out that - if the threshold was different - it would contradict the above Satversme Articles. However, the Constitutional Court holds that it is necessary to evaluate these issues as well, as the percentage threshold shall not be disproportionately high.

As far as the threshold is not at variance with the proportionality principle of elections, it is within the Saeima competence to determine the percentage level. However, when determining the electoral threshold, the legislator has to take into consideration that it cannot be too high. The situation when the elections discontinue being democratic shall not arise as the result of the electoral threshold. Only such a threshold is permissible which is necessary to reach the objectives.

The Constitutional Court is of the opinion that a 5 per cent electoral threshold is justified by its aim: to prevent political splitting of the Saeima, to ensure efficient execution of its tasks, at the same time furthering the existence of a stable executive power, democracy and welfare.

The fact that the above electoral threshold exists in many democratic state with the proportional or mixed electoral system (namely, 5 per cent of the total of voices), confirms the already mentioned conclusion. Electoral threshold exists in Denmark, France, Greece, Israel, Liechtenstein, Netherlands, Spain, Turkey, Germany, Sweden and other states. In several states the threshold is much higher than in Latvia, for example, the 17 per cent threshold in Greece (*see Rein Taagepera, Matthew Soberg Shugart. Seats and Votes. The Effects and Determinants of Electoral Systems. New Haven&London. Yale University Press, 1998, p.134).* In many of the former socialist states – Albania, Bulgaria, the Czeck Republic, Estonia, Lithuania, Poland, Romania, Slovakia, Hungary the electoral threshold has been also determined (*see Christian Lucky. Table of Twelve Electoral Laws. Electoral Law in Eastern Europe. East European Constitutional Review. 1994, Vol.3, No.2, pp.65-77).*

For example, the German electoral system is strictly proportional as concerns the division of voters in constituencies. The number of seats, gained by a party in the parliament, is the same as it would be if there was just one constituency in Germany. However, not to permit representation of excessive number of the ”small” parties at the parliament, the party has to overcome the 5 per cent threshold and gain at least three deputy seats in one-mandate districts (*see Rein Taagepera, Matthiew Soberg Shugart, p. 37).*

The Constitutional Courts of several states have acknowledged that the establishment of the electoral threshold does not contradict their Constitutions.

The Constitutional Court of the Czech Republic dismissed an application with the request to declare as null and void the election law norm, determining that the political parties, which have gained at least 5 per cent of the total number of votes, may receive seats in the Chamber of Representatives.

In its April 2, 1997 Judgment No. Pl. US 25/96 the Constitutional Court of the Czech Republic points out: ” The principle of representative democracy enables to integrate into the electoral mechanism some elements of stimulation when necessary – especially in cases where, by an uncontrollable proportional system, the splitting of votes among a large number of political parties, the substantial ”overmultiplication” thereof and the endangering of the functioning and continuity of the parliamentary system and its ability to adopt decisions is endangered… The five percent restriction rule may not be refused *a limine* as a restriction of aforegoing electoral rights contrary to the Constitution… If the above deviation from the proportionality of political representation, which arises because of the 5 percent threshold, does not create disproportionality, which justifies the doubt of the democratic character of political representation; the Constitutional Court of the Czech Republic has no other choice than to dismiss the petitioner’s claim”.

The Constitutional Court of Slovenia in its 1996 Judgment No. U-I-44/96 has concluded that the claim for the candidate list to gain at least three deputy mandates to acquire the mandates on the basis of remains of votes (distribution of seats takes place in two turns) does not contradict the principles of general and equal elections, determined in the Slovenia Constitution.

The Constitutional Court of Slovenia holds that the electoral threshold ”prevents an excessive political crushing of the National assembly which can make impossible effective implementation of its constitutional tasks, including the designing of a stable government and thereby a normal functioning of the political system. The electoral threshold therefore guarantees a normal functioning of the political system, being a prerequisite for the realization of democracy”.

The electoral system shall be stable and fundamental election laws or provisions must not be frequently changed as it may endanger the free expression of the will of people in the elections. The determined electoral threshold is an important provision of the electoral system, which shall be taken into consideration by the political forces, which want to participate in the process of elections.

Thus – a 4 percent electoral threshold was determined in 1992, but in 1995 it was increased to 5 percent. On February 19, 1998 the Saeima passed the Law ”Amendments to the Saeima Election Law” which envisaged to attribute the 5 percent threshold only to the candidate lists of political parties, at the same time determining an increased threshold- 7 percent to the lists of political party unions. The State President did not promulgate the amendments and returned the document to the Saeima for the second examination. When examining the Law the Saeima maintained the provision that the lists of candidates that have gained less than five per cent of the total number of votes in the whole of Latvia regardless of the fact whether the candidate list has been submitted by a political party or a political party union. To ensure stability of elections, it is possible to change the electoral threshold only in case if there is an essential reason for it.

Change of essential electoral provisions shortly before the regular elections negatively influences the procedure of the elections. If an issue on alteration of electoral provisions arises, a certain time limit is needed to allow public to express its viewpoint. If the legislator adopts the decision to change the electoral provisions, say, also about the change or canceling of the electoral threshold, it has to be done in a reasonable time before the regular elections.

Realization of the election right is closely connected with the right to freedom of expression, the right to participate in the activities of the State and of local government and the right to form and join associations. Articles 100, 101 and 102 determine the above rights. Taking into consideration that the

rights, fixed in Articles 100, 101 and 102 of the Satversme are guaranteed, proportional electoral system with a 5 percent electoral threshold ensures implementation of the electoral principles, recognized by democratic states.

Equal election rights envisage that the number of deputies to be elected shall be evenly distributed among the constituencies and that the possibilities of all the political parties and candidates are equal.

When distributing the deputy mandates, the number of the voters as well as the administrative, geographical and even historical factors shall be taken into consideration.

Distribution of the deputies among the constituencies and the formula of the distribution of seats to be applied creates the so-called electoral threshold (*see Rein Taagepera, Matthiew Soberg Shugart* p.*133).*Even in the states where the electoral threshold has not been determined, there exists a real electoral threshold as the results of the elections cannot reflect the choice of every voter.

There exist different methods for distribution of seats among the candidate lists in the world. In Latvia, the Sainte_Languë method is used to distribute seats for the Saeima deputies among those submitted candidate lists, which have overcome the 5 percent threshold. It has been established in the second part of Article 38 of the Saeima Election law:

" The procedure to be applied in distributing the seats in the Saeima among the winning lists of candidates shall be the following:

1) the valid ballot papers cast for each list of candidates in each constituency shall be counted;

2) the number of ballot papers cast for each list of candidates shall be divided by 1, 3, 5, 7 and so forth, until the number of divisions is equal to the number of candidates nominated in each list;

3) all the divisions results concerning all the lists of candidates shall be numbered in a general diminishing sequence for each constituency;

4) the seats in a constituency shall be assigned to the lists of candidates that correspond to the highest division results".

One shall take into consideration that the Sainte-Languë method in difference from other methods, which encourages getting of the "large" parties into the parliament, ensures the same possibilities of receiving seats in the parliament to both – "large" and "small" parties (*see Arend Lijphart. Electoral Systems and Party Systems. A Study of Twenty-Seven Democracies: 1945 - 1990. Oxford. Oxford University Press, 1994, p.23).* Cancellation of the

electoral threshold in Latvia by law, at the same time retaining the Sainte-Languë method in distribution of the Saeima deputy seats might create a situation, when an extremely great number of parties were represented at the Saeima.

Thus the challenged norm does not contradict the principle of equal election rights determined by Article 6 of the Satversme. As the principle of equal election rights has not been violated, the challenged norm is neither at variance with Article 91 of the Satversme, which envisages guaranteeing of equality in human rights, including the election right.

Elections are free, if the voters are able to express their freely chosen viewpoints as well as fight against violation of the election procedure.

Electors are able to freely create their viewpoint if the state institutions take into consideration the neutrality principle. The state is obliged to undertake positive measures to ensure guaranteeing the procedure of secret ballot. The norms of the Satversme, the Saeima Election Law and other laws ensure both the State neutrality and the secret ballot. It also envisages the possibility of fighting with violations of the election procedure, which is established by law.

The procedure of the elections of the 5th, 6th and the 7th Saeima and its assessment, expressed by both – the Latvian and international observers, testify that the elections have ensured the expression of free will of the people. Thus the report of the Observation Mission Of Democratic Institutions and the Human Rights Bureau ”Observation of the Republic of Latvia Parliamentary Elections” includes the following conclusion:” The Republic of Latvia Parliament elections, which took place on October 3, 1998 were open and professional” (*www.cvk.lv*).

Thus ungrounded is the viewpoint of the submitter that the expression of the free will of the voters is not ensured.

The Substantive part

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

decided:

To declare the second sentence of the first part of the Saeima Election Article 38 **as being in compliance with Articles 6, 8, 91 and 116 of the Satversme.**

The Judgment is final and allowing of no appeal.

The Chairman of the Court session Aivars Endziņš