



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, August 30, 2000

JUDGMENT in the name of the Republic of Latvia

in case No. 2000-03-01

The Constitutional Court of the Republic of Latvia in the body of the Chairman of the Court session A.Endziņš, the justices R.Apsītis, I.Čepāne, J.Jelāgins, A.Lepse, I.Skultāne and A.Ušacka, with the secretary of the Court session E.Rozenberga,

in the presence of the sworn advocate A.Ogurcovs and the deputy A.Bartaševičs- the authorized representatives of the petitioner i.e. 23 deputies of the 7th Saeima, namely, A.Bartaševičs, J.Jurkāns, A.Klementjevs, P.Maksimovs, M.Mitrofanovs, M.Bekasovs, B.Rastopirkins, A.Golubovs, O.Deņisovs, M.Lujāns, O.Tolmačovs, J.Pliners, I.Solovjovs, J.Urbanovičs, B.Cilevičs, J.Ādamsons, O.Zvejsalnieks, P.Salkazanovs, L.Bojārs, J.Čevers, G.Bojārs, I.Burvis

and the authorised representative of the institution that issued the act, which is disputed- the head of the Legal Bureau of the Saeima G.Kusiņš,

under Article 85 set by the Satversme (Constitution) as well as Items 1 and 9 of Article 16 and the first and seventh parts of Article 17 of the Constitutional Court Law

in a public hearing in Riga, on August 15, 2000 reviewed the case

”On Compliance of Article 5 (Items 5 and 6) of the Saeima Election Law and Article 9 (Items 5 and 6) of the City Dome, Region Dome and Rural Council Election Law with Articles 89 and 101 of the Satversme (Constitution), Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 25 of the International Covenant on Civil and Political Rights”.

The Constitutional Court **established:**

1. On May 4th, 1990 the Supreme Council of the Latvian SSR adopted the Declaration "On the Renewal of the Independence of the Republic of Latvia", resolving to declare the Decision of July 21, 1940 of the Saeima of Latvia "On the Republic of Latvia's Joining the USSR" null and void from the moment of its adoption, renewing the authority of the Satversme (Constitution) of the Republic of Latvia (henceforth-the Satversme), adopted by the Constituent Assembly on February 15, 1922, in the entire territory of Latvia. At the same time it was resolved to suspend the Satversme, with an exception of the Articles expressing the constitutional and legal foundation of the State of Latvia, which, according to Article 77 of the Satversme can be amended only by a referendum. Thus from May 4, 1990 to July 6, 1993 – the day when authority of the Satversme was entirely renewed - Articles 1, 2, 3 and 6 were effective *de facto*. During this period legislative acts of the Latvian SSR could be applied only if they did not contradict Articles 1, 2, 3 and 6 of the Satversme.

On August 21, 1991 the Supreme Council of the Republic of Latvia (henceforth- the Supreme Council) adopted the Constitutional Law "On the Republic of Latvia Status as a State", resolving to declare Latvia as an independent, democratic republic in which the sovereign power of the State belongs to the People of Latvia and its sovereign state status is determined by the Republic of Latvia Satversme of February 15, 1922.

On August 23, 1991 the Supreme Council passed the Resolution "On Anti-constitutional Activity of the Latvian Communist Party", stating that the activity of the Latvian Communist party was anti-constitutional. It established the fact that "the Latvian Communist Party is responsible for genocide against the Latvian nation, which has been realised by its leaders. Besides, co-operating with different military groups, it more and more acts like an alternative institution of power and for more than half a year terror, instigation and sabotage, taking away lives and destroying enormous material values, have become dominant in their activities." The document also stressed the fact that "the Central Committee of the Latvian Communist Party has become the centre, which consolidates, leads and co-ordinates anti-democratic forces. Its aim is to destabilise the situation, derange the process of independence and democracy, overthrow the lawful power of Latvia and renew the totalitarian regime."

On August 24, 1991, the Supreme Council issued the Resolution "On Suspension of Authority of Some Public and Socio Political Organisations", suspending the authority of the Communist Party of Latvia, the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour

Veterans and the Young Communist League. It assigned the Minister of Justice of the Republic of Latvia with the task of checking the illegal activities of the above organisations and later submitting the proposal on the possibility of their further activities to the Supreme Council.

On September 10, 1991, the Supreme Council adopted the Resolution "On Discontinuation of Authority of Some Public and Socio Political Organisations". The document stressed the fact that already in May, 1990 "the Communist Party of Latvia, the Working People's International Front of the Latvian SSR, the United Board of Working Bodies and the Republican Council of the Organisation of War and Labour Veterans formed the Committee for Defence of the Rights of the Citizens and the Constitution of the USSR and the Latvian SSR. It was renamed the All-Latvia Salvation Committee on November 25, 1990. Contrary to Article 2 of the Constitution of the Latvian SSR, which establishes that the sovereign power of the republic shall belong to the people and no one (parallel to the Council or disregarding it) has the right of realising the authority of the state, this Committee undertook the functions of the state power on October 25, 1990 and declared that it would delegate its representative to sign the Agreement of the Union. On January 15, 1991 the All-Latvia Salvation Committee proclaimed that all the state power belonged to it and announced about the dismissal of the Supreme Council and the government. In August 1991 the Central Committee of the Communist Party of Latvia, the Central Committee of the Young Communist League, the Working People's International Front of the Latvian SSR, the United Board of the Working Bodies and the Republican Council of War and Labour Veterans supported the coup. Besides, the Bureau of the Central Committee of the Communist Party together with the Riga City Communist Party Bureau adopted the decision, not only supporting the USSR Emergency Situation Committee, but also forming an operative group to help the Committee." The Supreme Council acted accordingly and decided "to discontinue the authority of the Latvian Communist Party, the Latvian (Lenin) Young Communist League, the Working People's International Front of the Latvian SSR, the United Board of the Working Bodies, the Organisation of War and Labour Veterans as well as their coalition – All-Latvia Salvation Committee as anti-constitutional and to confiscate the property of the above organisations without compensation". It was also decided to "explain to the former members of the Latvian Communist Party, Latvian Young Communist League, the Working People's International Front of the Latvian SSR, the United Board of the Working Bodies and the Organisation of War and Labour Veterans that they had the right of uniting in parties and other public organisations, the aims and activities of which were not directed to violent actions and changing of the existing power and are not contradicting the Constitution and the laws of the Republic of Latvia".

On August 24, 1991 the Supreme Council passed the Decision "On Discontinuation of Authority of the USSR Security Service in the Territory of the Republic of Latvia", declaring the activities of the USSR Security Service and its structural institutions, including the Latvian SSR State Security Committee, to be unlawful and directed against the interests of the Latvian people. The Latvian SSR State Security Committee was liquidated.

On June 30, 1992 the Supreme Soviet amended May 28, 1990 Law "On the Status of the Republic of Latvia People's Deputy". Amendments envisage that the Supreme Council may decide on the annulment of deputy's mandate if the deputy has operated against the Republic of Latvia Satversme and other laws, Supreme Council Resolutions, which ensure the existence of Latvia as an independent democratic state, if it is constituted by the Supreme Council commission conclusions and was confirmed on the plenary meeting of the Supreme Council. In its turn, Item 3 of the June 30, 1992 Supreme Council Resolution "On the Time and Procedure by Which the Republic of Latvia Law "On Amendments to the Republic of Latvia Law "On the Status of the Republic of Latvia People's Deputy" Takes Effect"" establishes that the above amendments shall be applied "to the activities carried out after the renewal of the Republic of Latvia Constitution on May 4, 1990, when other laws or Supreme Council resolutions took effect."

On the basis of the conclusion of the Parliamentary Investigation Committee, which was established on August 22, 1992 and taking into consideration the Law "On the Status of the Republic of Latvia People's Deputy", on July 9, 1992 the deputy mandate of 15 deputies was annulled for activities against Latvia as an independent, democratic state.

On May 19, 1994 the Saeima of the Republic of Latvia (henceforth- 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", which took effect on June 3, 1994. The Law determined the limitation of statement of fact of collaboration – 10 years from the date of the Law taking effect.

2. On May 4, 1990 the Supreme Council adopted the Declaration "On Accession of the Republic of Latvia to International Instruments Relating to Human Rights", signing several other international instruments and also the International Covenant on Civil and Political Rights (henceforth- the Covenant). In Latvia the Covenant took effect on July 14, 1992.

Article 25 of the Covenant determines that:

” Every citizen without discrimination (mentioned in Article 2) and any groundless restrictions shall have the right and possibility:

- a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) to vote and to be elected at genuine periodic elections on general terms of equality to elections by secret ballot, which ensure the free expression of the opinion of the people;
- c) to have access, on general terms of equality, to public service in the country.

The first part of Article 2 of the Covenant, in its turn, envisages that: ”every member state of the above Covenant shall secure to everyone within its jurisdiction the rights defined in this Covenant without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

On December 10, 1991 the Supreme Council adopted the Constitutional Law ” The Rights and Obligations of a Citizen and a Person”. Article 44 of the Law establishes that necessary limitation of people’s rights and freedoms may be determined by law in order to protect the rights, honour, health and morals of other people, as well as to guarantee State security, public order and peace.

On June 4, 1997 the Saeima adopted the Law ”On European November 4, 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols No. 1, 2, 4, 7 and 11”, acceding to the Convention and several of its Protocols. Besides, Article 4 of the Law states that Latvia considers jurisdiction of the European Court of Human Rights on issues relating to interpretation and application of the above Convention and its Protocols to be binding on Latvia.

In Latvia Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention) took effect on June 27, 1997. Article 14 of Convention establishes:” The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

In its turn, in accordance with Article 3 of the First Protocol of the Convention: ”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.”

On October 15, 1998 the Saeima supplemented the Satversme with Chapter 8 "Fundamental Human Rights", which took effect on November 8, 1998. Article 89, which is included in the above Chapter, declares that "the State recognises and protects the fundamental rights of a person in accordance with this Constitution, the laws and international agreements binding on Latvia". Article 101, in its turn, envisages that "every full-fledged citizen of Latvia has the right, in the manner prescribed by law, to participate in the activity of the state and local governments as well as to perform state service."

3. The 5th Saeima was elected in compliance with October 20, 1992 Law "On Elections for the Fifth Saeima". The first part of its Article 21 determined that "any citizen of Latvia can be nominated as a candidate, even one not residing within the electoral region, if he/she has signed a statement, according to the procedure stipulated by the Central Election Commission, 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 Defence Ministry, Russia's (USSR's legal successor) and 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." The second part of the Article determined that "the Republic of Latvia citizens regarding whom conditions of the statement mentioned in the first part of this Article shall be applied, as well as those whose rights to work in state authority and administration institutions are restricted by other legislative acts may not be nominated as the candidates."

On May 25, 1995 the Saeima adopted the Saeima Election Law, which took effect on June 6, 1995. Items 5 and 6 of Article 5 of the above Law established that:

"Persons are not to be included in the candidate lists and are not eligible to the Saeima if they:

..

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

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

On January 13, 1994 the Saeima adopted "City Dome, District Council and Rural District Council Election Law". Article 9 Item 4 of the Law established that: " The following persons shall not be nominated as candidates for the Dome (Council) election and shall not be elected to the Dome (Councils):

..

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

On November 6, 1996 the Saeima amended Article 9 of the above Law: supplemented it with a new Item 5 and from that time on, as well as at the moment of initiating the case, Items 5 and 6 of Article 9 of the City Dome, District Councils and Rural District Councils Election Law are effective in the following wording:

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

..

1

5) persons who after 13 January 1991 have been active in the CPSU (LCP), the Working People's International Front of the Latvian SSR, the United Council of Working Collectives, the Organisation of War and Labour Veterans, the All-Latvian Salvation Committee or its regional committees;

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

On December 6, 1996 the Saeima adopted the Law, changing the title of the City Dome, District Council and Rural District Council Election Law. Henceforward, also at the time of initiating the case, the title of the Law reads "City Dome and Rural Council Election Law".

On April 4, 2000 the Saeima adopted the Law "Amendments to City Dome and Rural Council Election Law", which took effect on May 4, 2000. The Amendments express the title of the Law in a new wording – "City Dome, Region Dome and Rural Council Election Law" (henceforth- Local Election Law). Item 6 of Article 9 is also changed and reads as follows:

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

..

6) persons who are or have been regular staff employees of the former USSR, Latvian SSR or other countries Security Service, as well as intelligence or counterintelligence service employees.”

The applicants hold that *Items 5 and 6 of Article 5 of the Saeima Election Law and Items 5 and 6 of Article 9 of the City Dome and Rural Council Election Law (henceforth- the disputable norms) contradict Articles 89 and 101 of the Satversme, Article 14 of the Convention and Article 25 of the Covenant and request to declare the disputable norms null and void.*

The viewpoint that the above norms, which limit the scope of full-fledged Latvian citizens who have the right of having access to the Saeima service (including the right of being nominated as candidates for the Saeima and elected) and to the Rural Council service (including the right of being nominated as candidates for the Rural Council and elected), contradict Article 101 of the Satversme, which does not envisage the above restriction, was expressed in the applications.

The applicants stress that the disputable norms forbid to nominate Latvian citizens as candidates for the Saeima or a Rural Council just because of their political opinion, because from January 13 to September 10, 1991 none of the organisations, mentioned in the disputable norms, had been forbidden. Therefore activities in the organisations at that period should be considered as public and political activities, creating no elements of criminal offence. Thus, to their mind, the disputable norms contradict both- Article 14 of the Convention, which determines that the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground also political or other opinion and Article 25 of the Covenant. Article 25 confers on citizens the right to vote and to be elected at genuine periodic elections on general terms of equality to elections by secret ballot, which ensure the free expression of the opinion of the people without any discrimination mentioned in Article 2 of the Covenant, without groundless restrictions, therefore -- without any distinction on the ground of political or other opinion.

In connection with the viewpoint, expressed in the written reply by the Saeima, that Article 14 of the Convention refers only to implementation of rights and freedoms mentioned in the Convention, the applicants have supplemented the legal motivation, indicating to Article 3 of the First Protocol of the European Convention for Protection of Human Rights and Fundamental Freedoms. In accordance with it 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. The applicants hold that one cannot consider elections to be free, if representatives of a whole group of citizens are denied the possibility of being elected in the Saeima and local authorities. To the mind of the applicants it means restriction of the right of freely expressing the opinion of the people, if they consider the candidates, against whom the restrictions to passive election rights are applied, to be the only ones to represent them in the structures of power. Simultaneously, the petitioners have reached the conclusion that- on the basis of Items 5 and 6 of Article 5 of the Saeima Election Law- the rights of individual Latvian citizens are being limited just because of their political opinion and former occupation. To their mind such restrictions contradict both the Satversme and the International Agreements binding on Latvia.

Representatives of the applicants stressed that in accordance with Article 91 of the Satversme fundamental human rights should be implemented without any discrimination, but the disputable norms permit discrimination because of political membership. Besides, without giving a legal motivation, it was pointed out that the disputable norms were not in compliance with Articles 10 and 11 of the Convention.

Representatives of the applicants referred to the viewpoint, which has been expressed in the practice of the European Court of Human Rights. Namely, the phrase "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" to their mind "in essence means not only freedom of expression, protected by Article 10 of the Convention, but also equality and the right to elect and be elected of all the citizens" (See the Decision of the European Court of Human Rights in the case of Mathieu-Mohin and Clerfayt, 1987).

In its turn, making a reference to the *Gitonas and others v. Greece* case reviewed by the European Court of Human Rights, the petitioners expressed a viewpoint that "the state allows to a certain extent (under constitutional procedure) to work out laws managing the status of parliamentarians, including criteria of disqualification into them. However, the criteria are different and depend on historical and political peculiarities of every state even though there exists a common interest to guarantee independence of the deputies and freedom of choice of the electorate. Number of situations, envisaged in constitutions and election legislature of many states of the European Union gives the possibility of choice of different criteria. However, none of the criteria may be considered as more reasonable than others, ensuring free expression of the opinion of people at free, just and regular elections."

The applicants stress that, by determining restrictions in the election laws to protect the legal interests of the state, and in this case- security of the state, the Saeima, contrary to the proclaimed objective, has violated much more important rights, namely, the right to free expression of the opinion. Besides,

determination of the disputable limitation regarding the persons, who after January 13, 1991 have been active in CPSU (CP of Latvia); Working People's International Front of the Latvian SSR; the United Board of Working Bodies; Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees to their mind cannot be motivated by the necessity of guaranteeing security of the state as the limitations have been determined only after completion of the period of legislation of the 5th Saeima and local authorities elected in 1994. At that time both in the 5th Saeima and the Domes (Councils) of municipality many elected persons, who at the moment are denied passive election rights, worked without causing any threat to the security of the state.

The applicants also pointed out that the European Court of Human Rights had renewed the rights of the Socialist Party of Turkey, without paying any mind to the fact that the party programme mentions proletarian dictatorship.

The applicants admit that Article 3 of the First Protocol of the Convention does not refer to elections of the local authorities, but they point out that prohibition to be elected in local authorities violates rights established in Articles 10 and 11 of the Convention in a discriminating way.

The representative of the applicants maintains that traits of collective responsibility are felt in the disputable norms as they envisage limitations in connection with membership in the above organisations and not with nature of activities of every person. Besides under the Latvian jurisdiction the term "membership" is interpreted in the way that it is quite enough to establish the fact of formal membership in an organisation to deny the person the possibility of becoming a candidate.

The Saeima in its written reply maintains that the disputable norms do not contradict either Articles 89 and 101 of the Satversme or Article 14 of the Convention, Article 3 of the First Protocol and Article 25 of the Covenant and requests to declare the applications of the Saeima deputies ungrounded and reject them.

It is stressed in the written reply that the right to participate in the activity of the state and local governments, envisaged in Article 101 of the Satversme is not absolute as the Article includes a condition "in the manner prescribed by law". Thus the Satversme as if envisages that enjoyment of the above right has to be determined by law. Both the Saeima Election Law and the City Dome and Rural Election Law belong to that group of laws and both-a certain procedure to implement the right as well as the scope of persons, who have a limited right of being elected is determined.

The Saeima expresses a viewpoint that any election system shall be evaluated taking into account the political development of the state. One should

consider the circumstances under which the limitations have been determined. The Saeima members state that the disputable norms are not directed against pluralism of ideas in Latvia, but against the group of persons who quite recently with their activities tried to hinder foundation of the democratic state of Latvia and returning of Latvia to the community of democratic states. They stress that the objective of the limitations is to protect the national security of Latvia and the democratic system of the state. Taking into consideration the above as well as the fact that there still exists the necessity to strengthen the state security and the democratic system, limitations to achieve the above objectives shall be regarded as reasonable. In essence the above limitations of the passive election right do not limit democracy and diversity of ideas but- on the contrary- strengthen democracy and pluralism.

As to the viewpoint, expressed in the applications, that the prohibition is directed against persons with different political opinion, the Saeima draws attention to the fact that only the persons, who with their activities in the above organizations confirmed that they were against the renewal of national independence of Latvia, have been denied the right of being included in the candidate lists.

The Saeima stresses that by ratifying the First Protocol of the Convention, Latvia has undertaken to hold free elections at reasonable intervals by secret ballot, under conditions, which ensure free expression of the opinion of the people in the choice of the legislature. Article 6 of the Satversme supplements Article 3 of the First Protocol of the Convention, precisely determining the principles and system of elections in Latvia. Article 9 of the Satversme establishes general criteria for the person who wants to become a candidate. The Satversme leaves one of them – competence – to the area of responsibility of the legislator.

The Saeima draws attention to the essence of the term "discrimination", which is used in Article 14 of the Convention as well as to the fact that – in compliance with the practice of the European Court of Human Rights – not any differences in application of the above right of the Convention shall be considered discrimination. The principle of equality is violated if the differences cannot be reasonably and objectively justified, taking into consideration the particular legal objective and proportionality.

In the written reply it is pointed out that the right of being elected established in Article 25 of the Covenant is not absolute. Article 25 of the Covenant shall be implemented without discrimination and groundless limitations, mentioned in Article 2 of the Covenant. Thus the Covenant allows well-grounded limitations and one has to take into consideration that not all limitations shall be regarded as discriminating. Conditions of the disputable norm to the mind of the Saeima members are directed to protection of the territorial unity, national

security and the democratic state system. They should be regarded as well-grounded and being in conformity with Article 25 of the Covenant.

Taking into consideration all the above argumentation, the Saeima holds that the disputable norms are in compliance with Article 89 of the Satversme, which establishes that the State recognises and protects the fundamental rights of a person in accordance with the Constitution, the laws and international agreements binding on Latvia.

At the Court session the Saeima representative expressed the opinion that the applications were ungrounded and requested the Court to reject them, declaring the disputable norms to be in compliance with Articles 89 and 101 of the Satversme, Article 14 of the Convention, Article 3 of the First Protocol and Article 25 of the Covenant.

The representative of the Saeima stressed that the right to participate at the elections was always restricted even in democratic countries. The body of voters is always smaller than the body of the citizens. It is important to motivate the limitation. He concluded that theoretically all persons who have the right of vote might participate at the elections. Limitations of the right are permissible only if they do not contradict the notion of democracy mentioned in Article 1 of the Satversme, general essence of elections and other Articles of the Satversme. Besides, one should take into consideration that limitations of the right to vote are perceived emotionally and - as exceptions from the principle - are to be interpreted in the narrow sense.

As concerns Article 3 of the First Protocol of the Convention the Saeima representative drew attention to the fact, that in any democratic state the self-protecting principle of democracy was admitted. It means that, taking into account proportionality, the democratic system of the state shall be protected from people who are threats to it or who are not ethically qualified to become representatives of a democratic state on a political or administrative level. He expressed the viewpoint that in specific historically political circumstances many states have adopted certain conditions, not only to avert urgent threats to national security but also to ensure that the citizens are not obliged to accept persons, who with their activities have proved not to be loyal to the democratic state system, as representatives of the state power. Otherwise trust in the state power and legitimacy, that is an absolute must of democracy, will be shaken.

The Saeima representative stressed that any election system should be evaluated by taking into account the political development of the state. Historically political circumstances under which the limitations have been determined should be considered as well.

He expressed the viewpoint that the disputable limitations are well grounded and therefore justifying. Prohibition to include in the candidate lists and to be

eligible to the Saeima persons who have belonged to foreign, first of all the former USSR occupational regime staff as well as former and present employees of security services results from interests of national security and territorial unity of Latvia. It concerns not only the present but also the former staff employees of the institutions, who have not publicly declared the fact and are therefore subjected to blackmail. Besides the limitation is connected with public loyalty to the political representatives of the state, which is quite necessary in a democratic state and which confirms a certain minimum of democratic political ethics. It cannot be attributed to persons who have worked to implement the power of the occupational regime – in the institution of persecution and repression. In their turn, persons, who after January 13, 1991 have been active in CPSU (CP of Latvia), Working People's International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees, during the period of restoring of independence, wanted to retain the totalitarian, undemocratic regime in Latvia and struggled against the process of regaining independence. In this case the legitimate interest of the democratic society is to demand from their political representatives a certain minimum of loyalty and political ethics. Persons, who have actively participated in the struggle against independent and democratic Latvia, are not able to present minimum national and democratic loyalty.

Expressing the statement that the disputable limitations are in compliance with the principle of proportionality, the Saeima representative pointed out that the State of Latvia did not apply any criminal sanctions to persons who at the critical moment with their participation in the activities of the above organisations and institutions had strengthened the position of those anti-state powers, who actively fought against this state and the democratic system. Thus limitations to hold separate positions cannot be regarded as disproportionate.

Speaking about limitations established with regard to persons who belong or have belonged to the regular staff of the USSR, Latvian SSR or foreign state security, the Saeima representative drew attention to Article 17 of the Law "On Maintenance and Use of Documents of the Former State Security Committee and on Stating of Facts of Collaboration with the State Security Committee" in compliance with which limitations are not termless. Besides crossing out candidates from the list is not the result of administrative arbitrariness but it is done on the basis of the individual court decision. Thus the above persons are guaranteed protection of the just court and the right to use the services of the advocate.

As concerns the limitations with regard to persons who after January 13, 1991 have been active in CPSU (CP of the Latvia), Working People's International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour Veterans, All-Latvia Salvation Committee or its regional committees, the Saeima representative stressed that the limitations

envisage individual and not collective responsibility, i.e., the limitations refer to members of the above organisations who have been active in these organisations after January 13, 1991. In this case crossing the candidates out of the list is likewise not administrative arbitrariness but it is done on the basis of an individual court decision.

The Saeima representative indicated that the State of Latvia has been very liberal as regards criminal punishment of the representatives of the power of the former regime, whereas as regards establishing of other limitations – relatively consequent. He concluded that the principle of proportionality has been observed and the benefit of the limitations to the society of Latvia on the whole is much more important than limitation of the rights of some persons.

The Constitutional Court **concluded:**

1. In compliance with Article 1 of the Satversme, Latvia is an independent democratic republic. In its turn Article 101 envisages a really important right serving as the guarantee to the existence of democracy and which is directed to ensure legitimacy of the democratic state system. It is the right of every citizen of Latvia, in the manner prescribed by law, to participate in the activity of the state and local authorities. However the right is not absolute, as Article 101 of the Satversme includes the condition "in the manner prescribed by law". Thus the Satversme determines that the way of employing the right shall be established by law.

According to the theory of constitutional law, constitution leaves conditions and boundaries of contents of concrete fundamental rights for the legislator to make a decision on. "In such a case fundamental rights become effective in compliance with the standards of law.., and lastly everything depends on the normal legislator... The regulating authority of the legislator may be positive or negative: positive as the right of determining the contents of the fundamental rights, negative- as the authority to limit fundamental rights". (see *Deutches Staatsrecht. Dr.Theodor Maunz und Dr.Reinhold Zippelius. C.H.Beck'sche Verlagsbuchhandlung, München, 1991, p. 158-159*).

Evaluating the process of adoption of Article 101 by the Saeima it can be seen that amendments, introduced during the third reading, shall be interpreted as the legislator's will not only to advance the criterion "full-fledged citizen" (the first and second readings) but even more- to leave the competence of determining that scope of Latvian citizens whom Article 101 of the Satversme grants the right of participating in the activities of the state and local authorities in the sector of other laws. By including the words " in the manner prescribed by the law" the legislator has determined that in every concrete case the person applying the right shall interpret the words "every full-fledged citizen of Latvia" taking into consideration limitations established by laws.

One should take into account also the viewpoint expressed by the Saeima representative that "the right to participate in the elections is limited also in democratic states."

As to the disputable norms of the Saeima Election Law, Article 101 of the Satversme shall be interpreted together with Article 9 of the Satversme. The way of ensuring implementation of the right of a person to participate in the activities of the Saeima in case if a person strives to become the Saeima deputy, shall be in conformity with the condition expressed in Article 9 of the Satversme " any full-fledged Latvian citizen who is over twenty- one years of age on the first day of elections may be elected to the Saeima".

During the process of debating about and adopting Article 9 of the Satversme, the Constituent Assembly both in its second and third reading discussed the question of election right limitations. The Assembly discussed the possibility of incorporating the limitations in the Satversme. On October 11, 1921 rapporteur Margers Skujenieks at the Constituent Assembly pointed out that "there are certain categories of citizens, who cannot enjoy the election right, e.g. imbecile persons, who are under guardianship, criminals etc. In point of fact the majority of the commission hold that these Articles shall be included in one or the other law: either in the election law or the Satversme"(Verbatim Report of the Constituent Assembly of the Republic of Latvia, booklet 14, page 1575). Thus the viewpoint of the Saeima representative that Article 9 of the Satversme authorises the Saeima to specify the contents of the notion "a full-fledged citizen", which is included in the Saeima Election Law.

Well grounded is also the viewpoint of the Saeima representative that limitations of this right are permissible only if they do not contradict the notion of democracy, mentioned in Article 1 of the Satversme, general essence of elections and other Articles of the Satversme. Besides, "limitations of the right to vote are perceived emotionally and –as exceptions from the principle- are to be interpreted in the narrow sense".

Thus the legislator, when passing the disputable norms, has not violated Article 101 of the Satversme, but on the contrary – has implemented the task of this Article- that of passing the needed legal norm to realize the fundamental right.

2. When adopting the Declaration "On Accession of the Republic of Latvia to International Instruments Relating to Human Rights" on May 4, 1990, the Supreme Council proclaimed that it acknowledged as binding several international instruments relating to human rights, among them the Covenant and the UNO Universal Declaration of Human Rights, adopted in 1948.

The Covenant has been included in the UNO Charter of Human Rights, which contains the most important global instruments in the sector of human rights adopted by UNO, and the Universal Declaration of Human Rights is among them.

The first part of Article 21 of the Universal Declaration of Human Rights determines that "every person has the right to take part in the government of his country, directly or through freely chosen representatives", in its turn the third part envisages that "the will of the people shall be the basis of the state power: this will shall be expressed in periodic and fair elections which are held on the basis of general and equal election rights, by secret ballot or any other equivalent forms, which ensure the free expression of the opinion of the people." At that time incorporation of the Article in the above Declaration was " a revolution within a revolution", because it "established not only equal and inalienable rights of an individual as regards the state but also minimum demands as regards the structure and functioning of the state: the authority of its government must be based on the will of the people, besides there must be a system of democratic participation with equal political rights for every citizen." (see *The Universal Declaration of Human Rights: A Commentary*. Scandinavian University Press, Oslo, 1992, p.299).

Article 21 of the Universal Declaration of Human Rights shall be interpreted in compliance with the principle of equality fixed in Articles 1, 2, 4 and 7 as well as provisions determined in Article 29. Namely, every person has duties to the community and in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of the others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. And what is more important-implementation of those rights and freedoms by no means shall contradict objectives and principles of the UNO, i.e. preclusion and elimination of threats to peace and security and respecting of the principle of sovereignty and equality of states.

The ideas of the Universal Declaration of Human Rights are specified in the Covenant. And the norms incorporated in Article 25 of it determine that every citizen shall have the right and the opportunity without any of the distinctions mentioned in Article 2 of the Covenant and without unreasonable restrictions to vote and be elected at genuine, periodic elections. In compliance with the practice of interpretation of the Covenant, the norms of Article 25 confer the right not only in the choice of legislature but also in local Dome (Council) elections. (See

The Universal Declaration of Human Rights: A Commentary. Scandinavian University press, Oslo, 1992, p.307).

Article 25 of the Covenant, although it envisages inadmissibility of discrimination with regard to implementation of the above right, also acknowledges the possibility of limiting the right, stressing that " every citizen without.. unreasonable restrictions shall have the right and possibility". Thus, determination of reasonable restrictions with regard to the rights incorporated in Article 25 of the Covenant is admissible.

On November 10, 1989 at its 37th session the UNO Committee of Human Rights, by accepting the commentary of the UNO High Commissioner on the essence of discrimination, has acknowledged that not all types of differential treatment constitute prohibited discrimination. Determination of reasonable and objective prohibition with an aim, which is considered as legitimate by the Convention, cannot be regarded as discrimination. Besides, the General Assembly of the UNO, when evaluating the adjustment included in Article 25 of the Covenant, has stressed that the international society, trying to advance efficiency of the principle of periodic and genuine elections, must not violate the right of every sovereign state to freely choose and develop its political, social, economic and cultural system, regardless of the fact if it complies with the choice of other states (see UNO Resolution A/RES/44/146, December 15, 1989).

3. Implementation of commitments envisaged in Article 3 of the First Protocol of the Convention is an essentially important provision for any democratic state system, based on human rights. The Article guarantees the basis of democratic community- existence of a representative legislator, elected for a certain period (see The Greek case, Comm. Report 05.11.para.416, Yearbook 12, pages 179-180) as in compliance with the Preamble of the Convention it is best of all to maintain fundamental human rights and freedoms in the state with "valid political democracy".

This Article includes provisions on elections of the legislator, but does not contain provisions on local authority elections (see Frede Castberg. The European Convention on Human Rights. A.W.Sithoff-Leiden Oceana publications inc.-Dobbs Ferry, N.Y.,1974, page 181). Thus Article 3 of the First Protocol of the Convention does not refer to the Local Authority Election Law.

As the European Court of Human Rights has declared in the case Mathieu-Mohin and Clerfayt, even though the states have " a wide margin of appreciation in this sphere", any means or claim, restricting the norms expressed in Article 3 of the First Protocol of the Convention shall comply with

the following preconditions: it must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised; rights may be restricted "only in an extent which does not deprive the right of its essence and does not diminish its efficiency"; the "principle of equality of treatment" shall be respected and arbitrary restrictions must not be used (see The Human Rights Act 1998: Enforcing The European Convention in the Domestic Courts. Page 390).

Therefore the viewpoint of the representative of the Saeima that the restrictions to election rights, established in Article 3 of the First Protocol of the Convention, shall be determined in the universal procedure. One has to evaluate whether the established restriction of the right has a legitimate aim and whether it is necessary in a democratic society.

4. Groundless is the statement of the applicants that the disputable norms, forbidding nomination and electing Latvian citizens to the Saeima or local authorities, discriminate them just because of their political membership. To their mind that contradicts prohibition of discrimination on the ground of political conviction (opinion), mentioned in Article 2 of the Covenant and Article 14 of the Convention. The disputable norms do not envisage difference in treatment just because of political conviction (opinion) of the person, but they determine restriction of the election right for activities (after January 13, 1991) against the renewed democratic system.

The European Court of Human Rights holds that Article 14 of the Convention does not include any prohibition of difference in treatment with regard to realisation of rights and freedoms envisaged by the Convention. The principle of equal treatment is considered to be violated only if the difference of treatment does not have a reasonable and objective justification and a legitimate aim. Existence of the above justification shall be appreciated by taking into consideration the aims and consequences of the issue, which usually dominate in the democratic community (see Decisions of the European Court of Human Rights: Belgian Linguistic case (1968) and Karlheinz Schmidt v. Germany (1994)).

One has to agree to the viewpoint expressed by the Saeima that the Covenant also allows justified restrictions of the election right and not all restrictions are considered to be discriminating.

The Constitutional Court, after getting acquainted with the point of view of both – the representatives of the applicant and the representative of the Saeima, as well as with the practice of application of the disputable norms by courts of general jurisdiction and the Central Election Committee hold that it is necessary to clarify the actual meaning and contents of the term "have been active".

It became clear that "to be active" means to continuously perform something, to take an active part, to act, to be engaged in (see Latviešu valodas vārdnīca – the Dictionary of the Latvian language- Rīga, Avots, 1998, page 168).

When studying the introduction of the term in the disputable norm, it was found that the Saeima member Māris Grīnblats, upholding the proposal of the Saeima faction "To Fatherland and Freedom" to incorporate the disputable norm in Articles 5 and 6 of the Saeima Election Law, at the Saeima May 25, 1995 session rejected the objections of the Legal Committee and pointed out : if "the facts, that he has been, acted or found himself in one, another or the third organisation, become known, then the facts testify that he has violated the law and given false data about himself". At the session the Saeima member Māris Budovskis also interpreted the term in its broader sense, i.e., he expressed the viewpoint that members of the anti-state organisations "should not get in the higher political sectors".

However, on December 18, 1997, when discussing the amendments to Articles 5 and 6 of the Saeima Election Law, proposal of Māris Grīnblats to substitute the phrase "have been active" with the wording "are or have been the members, participants or fellows of the organisations or boards" was turned down. For example, the Saeima member Ilmārs Bišers pointed out: "We are not in raptures about the wording "have been active", as we ourselves understand that to prove the above fact is difficult, but it would be even more difficult and more dangerous to adopt the amendment of Grīnblats. Why? Because many members of the Communist Party did not formally end their membership in the party... There are many of them who just tore their membership cards. I know people who left the party, and, even if they have discontinued membership in it, we cannot be sure that the Committees of the CP have reviewed information about it. Perhaps they have just put the cards in one big heap and in the archives you would find that they have formally not been excluded from the party."

Thus the legislator has connected restrictions with the degree of individual responsibility of every person in realisation of the aims and programme of these organisations. And the restriction to be elected into the Saeima or the local authority, included in the disputable norms is connected with the activities of every concrete person in the respective socio-political organisations.

Formal membership in any of the above organisations cannot serve as the reason of forbidding a person to be included in the candidate list and being elected in the Saeima. For example, in accordance with Article 5 of the Supreme Council August 23, 1991 Resolution "On Anti-constitutional Activity of the Latvian Communist Party in the Republic of Latvia" "membership to the Latvian Communist Party is not a reason for limitation of human rights,

discrimination and persecution". The Supreme Council September 10, 1991 Resolution "On Discontinuation of Some Public and Socio Political Organisations" in its turn states the fact about unquestionable activities of the above organisations and their leaders against national independence of Latvia.

Thus the disputable norms are directed only against those persons who with their activities after January 13, 1991 and in the presence of the occupational army tried to renew the former regime. But the norms are not applied to persons with different political conviction (opinion). The tendency, characteristic to particular courts, to focus only on establishing the fact of formal membership and not evaluating the activity of a person, does not comply with the aim, which the legislator, when adopting the disputable legal norm has tried to achieve.

5. Article 89 of the Satversme determines that the State recognises and protects the fundamental rights of a person in accordance with the Constitution, the laws and international agreements binding on Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international ones. Quite to the contrary- the aim has been to achieve mutual harmony of the norms.

In cases, when there is doubt about 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, which in accordance with liabilities Latvia has undertaken (Article 4 of the Law "On November 4, 1950 European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 2, 4, 7 and 11) is mandatory when interpreting the norms of the Convention. This practice shall be used also when interpreting the respective norms of the Satversme.

To establish whether the disputable restrictions comply with Articles 89 and 101 of the Satversme, and are "based on" Article 25 of the Covenant and Article 3 of the First Protocol of the Convention, one has to evaluate if the restrictions included in the disputable norms are:

- 1.) determined by the law, adopted under due procedure;
- 2.) justified with a legitimate aim;
- 3.) are needed in a democratic society.

As the case does not contain the dispute on whether the restrictions have been determined by the law, adopted under due procedure, the two last issues have to be evaluated i.e. if the restrictions have a legitimate aim and if they are needed in a democratic society.

In its turn, to establish if the disputable norms comply with Articles 89 and 101 of the Satversme, Article 25 (in connection with Article 2) of the Covenant and Article 3 of the First Protocol of the Convention (in connection with Article 14), one has to evaluate if the disputable norms limit the rights of persons in a discriminating way. Thus one has to establish if:

- 1) restrictions have a legitimate aim;
 - 2) restrictions are proportional to the aim.
6. With May 4, 1990 Declaration "On the Renewal of the Independence of the Republic of Latvia" the authority of Articles 1, 2, 3 and 6 was renewed. Simultaneously only those norms of the Constitution of the Latvian SSR, which did not contradict Articles 1, 2, 3, and 6 of the Satversme, were effective.

Although the democratic state was renewed "the principle of parliamentarism was alien to the conservative leaders of the Latvian Communist Party. It was not going to give up the role of the "leading and ruling force". As it could not win in the elections of the Supreme Council of the Republic of Latvia, it started anti-state activities. With the efforts of the Latvian Communist Party and its satellite organisations: the Young Communist League, the International Front, the United Board of Working Bodies, Organisation of War and Labour Veterans the All-Latvia Salvation Committee was established. In December 1990 this organisation, which did not represent the legal power of Latvia, addressed the President of the USSR M.Gorbachev with a request to introduce a direct presidential rule in Latvia" (V.Blūzma. The Beginnings of Formation of Political Parties in Latvia.//V.Blūzma and others Renewal of the State of Latvia 1986-1993. Riga, 1998.pages 268-269).

On January 13, 1991 the 10th Plenum of the Central Committee of the Latvian Communist Party took place in Riga. At it the issue of seizing the power by any means, even including bloodshed, was discussed. Besides the demand to the government, the Supreme Council and local authorities to resign was expressed. The All-Latvia Salvation Committee was asked to take over the power in the state (see the July 9, 1992 Decision of the Parliamentary Committee of the Supreme Council).

On August 20, 1991 the socio political organisations, named in the disputable norms, circulated the appeal, informing the inhabitants of the Republic of Latvia that the state of emergency had been declared. All the inhabitants were asked to turn against everybody who did not obey the measures of the Committee of the State of Emergency.

As the aims of the activities of these organisations were connected with destruction of the existing state power, its essence was anti-constitutional. And the legislator on August 24, adopting the Resolutions "On Discontinuation of the Activity of Some Public and Socio Political Organisations" and "On Discontinuation of the Activities of the USSR Security Service in the Territory of the Republic of Latvia" evaluated it as anti-constitutional. Activities of the above organisations were directed against the independence and democracy of the Republic of Latvia.

Thus the aim of the restrictions of the passive election rights is to protect the democratic state system, national security and the territorial unity of Latvia. The disputable norms are not directed against pluralism of ideas in Latvia or political opinion of a person, but against persons, who with their activities have tried to destroy the democratic state system and thus have turned against Article 1 of the Satversme. Use of human rights must not be turned against democracy as such.

In 1990 the Copenhagen OSCE Conference on Human Dimensions in its document declared that development of the society based on pluralistic democracy was the required condition to ensure the atmosphere of durable peace, security and co-operation in Europe.

The states, acceding to the document, among them Latvia, in accordance with its laws and international liabilities consider protection of the state democratic order against activities of separate persons, groups or organisations, using terrorism or violence (or who do not refuse from terrorism and violence) to destroy the democratic order of the respective state or democratic system of another member state as its duty.

Even though the specific law, called the lustration law, has not been adopted in Latvia, experience of post-socialist states, acquired during the period of overcoming the consequences of the old regime and transition to a democratic state, was summed up in Resolution No.1096 (1996) of the Parliamentary Assembly of the Council of Europe "On Measures to Dismantle the Heritage of Former Communist Totalitarian Systems". On the one hand this Resolution, referring to the Guidelines No.7568 of the Legal and Human Rights Committee of the European Council to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law, stresses that "disqualification resulting from the lustration process shall not exceed the period of five years, as one need not underestimate the possibility of positive changes in people's attitude and habits. It would be desirable to complete the lustration process to December 31,1999, as up to that time the democratic system in the former

communist totalitarian countries should be stable.” However, the socio political situation of every state should be estimated individually as, on the other hand, the Resolution also expresses concern that the transition process, the aim of which is liquidation of the consequences of the heritage of the former communist totalitarian system, may fail and the result may turn out to be renewal of a ”velvet” totalitarian regime. Besides one should take into conclusion that the Resolution of Parliamentary Assembly is just a recommendation (see the Statute of the Council of Europe, to which the Republic of Latvia acceded with the February 2, 1995 Law ”On the Statute of the Council of Europe”).

The essence and efficiency of rights lies also in ethics. To demand loyalty to democracy from its political representatives is in the legitimate interests of a democratic society. When determining restrictions, respect and honour of the candidates legally protected by law is not questioned. It is just doubted if the respective persons deserve to represent the people in the Parliament or the respective local authority. The restrictions concern persons, who have been the staff employees of the repression apparatus of the occupation regime or after January 13, 1991 have been active in the organisations, mentioned in the disputable norms, who fought against the renewed Satversme and the state of Latvia. A similar viewpoint was expressed also by the Federal Constitutional Court of the GFR:” He, who has spied on and oppressed his own people, who has deceived, betrayed and cheated or who is responsible for it all, shall have no place in Bundestag even if one cannot deprive him of his mandate” (see May 21,1996 Decision in case 2 BvE 1/95).

Well-grounded is the statement of the Saeima representative that a democratic state system has to be protected from persons who are ethically not qualified to become the representatives of a democratic state on the political or administrative level and who with their activities have demonstrated that they are not loyal to the democratic state system. The state should be protected from persons, who have worked in the apparatus, implementing occupation and repression and persons, who after renewal of independence in the Republic of Latvia tried to renew the anti- democratic totalitarian regime and resisted the legitimate state power.

The fundamental values of the society contain a consensus, which expresses mental traditions and ethical principles of it. Different world outlook and different systems of value can exist in one and the same society. However, it is necessary to have unifying, universally recognised and consolidating basic conceptions on which to base both the rights and the whole public life of the people and the state. The greater the pluralism, the more necessary the mutual tolerance of

different viewpoints and agreement on generally recognised values, non-observance of which precludes a tolerant attitude (see Horn. Introduction in Legal Science and Philosophy of Rights.// Law and Rights, volume 2, No.2, page 41).

Thus the statement of the applicants, that the disputable norms violate the principle demanding equal attitude to the citizens, is groundless as the rights are not violated in such an extent that the essence of the right has been divested and its efficiency weakened. Rights should be ethical.

From the disputed norms it follows that restrictions of the passive election right does not refer to all members of the mentioned organisations but only to those who had been active in the organisations after January 13,1991. Crossing out a person from the candidate list, if he had been active in the organisations is not an administrative arbitrariness, it is based on individual court decision. In accordance with the law, establishment of individual responsibility lies in the competence of the court of general jurisdiction. Both the Civil Code of Latvia and the effective Civil Law determine a specific procedure of reviewing cases on establishing restrictions of the election law. Thus the principle, requiring equal attitude to every citizen has not been violated, as protection by court is guaranteed and the restrictions are not arbitrary. Consequently the aim of the restrictions is legitimate.

7. Ungrounded is the statement of the applicants that restriction of the passive election right to persons who had been active in the socio political organisations mentioned in the disputable norms were determined only after the 5th Saeima and local authorities elected in 1994 had completed the whole period of their legislation.

The disputable norms were really adopted on May 25, 1995 (in the Saeima Election Law) and on November 6, 1996 (in the Local Authority Election Law). However similar restrictions have been determined or proposals to establish them expressed.

On August 22, 1991 the Supreme Council adopted the Resolution "On Formation of a Parliamentary Investigation Commission to Hold an Inquiry into the Attempt of the Illegitimate Coup". On July 9, 1992 the Supreme Council confirmed the Conclusion of the Commission. By the same Decision and on the basis of Article 5 (its second part, Item 5) of the Law "On the Status of the Deputy of the Republic of Latvia People's Deputy" the Supreme Council nullified mandates of 15 deputies. The above norm, which was adopted in the wording of June 30, 1992 determines that:" The Supreme Council decides on the annulment of deputy's mandate, if the deputy has operated against the Republic of Latvia Satversme and other laws, Supreme Council

Resolutions, which ensure the existence of Latvia as an independent democratic state, if it is constituted by the Supreme Council commission conclusion and was confirmed on the plenary meeting of the Supreme Council”.

When studying the process of adoption of the Law ”On the Elections for the Fifth Saeima” (verbatim reports of the sessions, proposals by the deputies), one can see that already on March 11, 1993 the deputy of the Supreme Council Linards Muciņš submitted a motion on restrictions of the passive election right for 10 years to the CPSU and CPL city, district, region secretaries and hired party committee secretaries (whose rights at that time were compared to the above persons), members of the CPSU and CPL, who operated in the Communist Party after January 13, 1991, advisors to the President of the USSR, members of the All-Latvian Salvation Committee or its regional committees, members of the Working People’s International Front of the Latvian SSR, the United Board of Working Bodies, Organisation of War and Labour veterans. However, taking into consideration the fact that the deputies of the Supreme Council had been elected ”not only by the citizens of Latvia but also by the citizens of the USSR, residing in Latvia, among them quite a number of soldiers of the occupational army” (E.Levits. May 4,1990 Declaration on the Renewal of Independence.// V.Blūzma and others Renewal of the State of Latvia 1986-1993. Riga, 1998, page 217) as well as turning against all the members of the Central committee of the CPSU and CPL, to their candidates and hired secretaries of the CP committees in cities, districts and regions, many of whom had become the deputies of the Supreme Council and deserved it for their activities in the renewal of independence in Latvia, the proposal was not adopted.

Besides the deputies envisaged to determine restrictions on posts, referring also to the Saeima deputies. Article 21 (its second part) of the Law ”On the Elections for the Fifth Saeima” determines that persons, whose rights to work in state authority are restricted by other legislative acts may not be nominated as the candidates. However up to the Elections for the Fifth Saeima such laws were not adopted.

During the process of discussing the above draft law, a viewpoint was expressed that the Fifth Saeima, after estimating the political situation would adopt the Election law and decide on the necessary restrictions of the election right.

Any election system should be evaluated by taking into consideration the political development of the state. As the practice of legislation testifies, after renewal of the independence of the Republic of Latvia, adoption or amending of the election law has been topical just before the elections. Therefore it is understandable that the respective restrictions

in the Local Authority Law have been established only in November 1996. Henceforward the legislator also evaluated historical and political conditions of the development of democracy in Latvia and before every election the election laws had been "opened" again.

To establish whether the applied measure, i.e., restrictions of the passive election right is proportional to the aims – to protect, firstly, the democratic state system, which is ensured also by observing the universally approved ethical norms, secondly, national security and territorial unity of Latvia, one has to evaluate the political situation in the state and additional conditions. As the legislator has repeatedly evaluated the political and historical conditions of the development of democracy in connection with the issues of the election right, then – taking into consideration the above mentioned conclusions – the Court does not hold that at the present moment there exists the necessity to doubt the proportionality of the applied measure and the aim.

However, the legislator, periodically evaluating the political situation in the state as well as the necessity and validity of the restrictions should decide on determining the term of the restrictions in the disputable norms, as such restrictions to the passive election rights may last only for a certain period of time.

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

the Constitutional Court

DECIDED:

to declare that Items 5 and 6 of Article 5 of the Saeima Election Law and Items 5 and 6 of Article 9 of the City Dome, Region Dome and Rural Council Election Law comply with Articles 89 and 101 of the Satversme, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of the First Protocol of this Convention as well as Article 25 of the International Covenant on Civil and Political Rights.

The Judgment takes effect from the moment of its announcement. The Judgment is final and allowing of no appeal.

The Judgment was announced in Riga, on August 30, 2000.

The Chairman of the Court session

A. Endziņš

Justice of the Constitutional Court

R. Apsītis

Justice of the Constitutional Court

I. Čepāne

Justice of the Constitutional Court

J. Jelāgins

Justice of the Constitutional Court

A. Lapse

Justice of the Constitutional Court

I. Skultāne

Justice of the Constitutional Court

A. Ušacka