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**The norm of The *Saeima* Election Law that prohibits from running for the election persons, who after 13 January 1991 had been active in certain organisations, in appropriate interpretation of it, complies with the *Satversme***

On 29 June 2018, the Constitutional Court passed the judgement in case No. 2017-25-01 “On Compliance of Para 6 of Section 5 of The *Saeima* Election Law with Article 1, Article 9 and Article 91 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Para 6 of Section 5 of The *Saeima* Election Law:

“Persons are not to be included in the lists of candidates and are not eligible to be elected to the Saeima if they after 13 January 1991 have been active in the Communist Party of the Soviet Union (the Communist Party of Latvia), the International Front of the Working People of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees.”

**The Norms of Higher Legal Force**

Article 1 of the *Satversme*: “Latvia is an independent democratic republic.”

Article 9 of the *Satversme*: “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.”

The first sentence of Article 91 of the *Satversme*: “All human beings in Latvia shall be equal before the law and the courts.”

**The Facts of the Case**

The case has been initiated with regard to an application submitted by Tatjana Ždanoka. The applicant had been the member of the Control and Audit Commission of the Communist Party of Latvia (hereinafter – CPL) until August 1991. A court, on the basis of an application by the Prosecutor’s Office, established the fact that she had been active

in CPL after 13 January 1991. In 2017, the applicant submitted an application to the Central Election Commission to find out, whether she had the right to be a candidate in the *Saeima* election. The Central Election Commission informed her that in the particular circumstances, on the basis of the contested norm, the applicant could not be included in the list of candidates for the *Saeima* election. The applicant holds that the contested norm is incompatible with Article 1 and Article 9 of the *Satversme* and also violates the equality principle that follows from the first sentence of Article 91 of the *Satversme*.

## **The Court's Findings**

### On the content of the contested norm

The Constitutional Court noted that, first and foremost, the content of the contested norm had to be established. In view of the fact that the content of a legal norm is determined also by the processes that have occurred following the adoption of the norm, the Constitutional Court interpreted the contested norm by taking into account its objective aim at present, in 2018, and considering the current development of Latvia as a democratic state governed by the rule of law. [13., 13.2.]

The Constitutional Court found that the contested norm was one of the tools of a defensive democracy, which is used by a democratic state governed by the rule of law to protect its constitutional bodies and the national security against persons, who by their activities pose a threat to the independence of the Latvian State and the principles of a democratic state governed by the rule of law. A democratic state governed by the rule of law has the right to demand that the persons, who hold public offices, were loyal to the State and, in particular, the constitutional principles that it is based on. [13.3.]

The Constitutional Court found that the contested norm was to interpreted as to mean that it prohibited from running for the *Saeima* election a person who after 13 January 1991 had been active in the Communist Party of the Soviet Union (CPL), the International Front of the Working People of the Latvian SSR, the United Board of Working Bodies, the Organisation of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees, by her actions posed a threat and continued to pose a threat to the independence of the Latvian State and the principles of a democratic state governed by the rule of law. [13.4.]

On compliance of the contested norm with Article 1 and Article 9 of the *Satversme*

*On the existence of a restriction on fundamental rights*

The Constitutional Court found that the contested norm restricted a person's right to run for the *Saeima* election. [17.2.]

*On whether the restriction on fundamental rights has been established by law and whether it has a legitimate aim*

The Constitutional Court recognised that the restriction on fundamental rights included in the contested norm had been established by law. The Constitutional Court examined, whether the restriction on fundamental rights still had a legitimate aim, by taking into consideration the current level of democratic development of the society and the state. The Constitutional Court found that the legitimate aim of the restriction included in the contested norm was to not allow that a person, who by her activities continued to pose a threat to the independence of the Latvian State and the principles of a democratic state governed by the rule of law, could run for the *Saeima* election. Thus, the restriction on the fundamental rights included in the contested norm has a legitimate aim – protection of the democratic order of the state. This aim has been advanced in accordance with the principle of self-defending democracy. [19., 20., 20.1. and 20.2.]

*On the proportionality of the restriction on fundamental rights*

The Constitutional Court found that the restriction of a person's fundamental rights was an appropriate measure for reaching its legitimate aim. [22.]

In examining, whether more lenient measures for reaching the legitimate aim were not available, the Constitutional Court took into consideration that the state enjoyed broad discretion in organising its election system.

Although Latvia is a Member State of the European Union, NATO, the Council of Europe, the Organisation for Economic Co-operation and Development, and other organisations, this fact *per se* does not exclude yet possible threats the State of Latvia. At

the same time, in assessing, whether the restriction on fundamental rights was necessary, the Constitutional Court took into consideration also the fact that in the Latvian society democracy was far from being considered as being self-evident yet. [23.]

The Constitutional Court noted that the State, in safeguarding its democratic order, had the right to make an independent assessment of the degree of threats and decide on retaining the restriction in the future. If the legislator, by exercising its discretion, has decided that the restriction established by the contested norm, continued to be necessary, then a regulation that would allow the respective person to run for the *Saeima* election and would require also that the activities in any of the organisations referred to in the contested norm were noted, could not be recognised as being a more lenient measure. [23.]

The last time that legislator examined the restriction included in the contested norm on its merits was in 2010. The Constitutional Court underscored: although the frequency, how often the legislator should re-examine the particular restriction for a person to run for elections, did not follow from the European Convention for the Protection of Human Rights and Fundamental Freedoms or the *Satversme*, the fact that the *Saeima* had not reviewed this restriction since 2010 should be assessed critically. However, within the system of Latvia's constitutional bodies, the Constitutional Court's jurisdiction also includes verification, whether retaining of the restriction on fundamental rights included in the contested norm after 2010, has reasonable grounds, i.e., that this restriction has not been set arbitrarily. The Constitutional Court pointed to the external and internal threats that, in the context of the democratic development of the Latvian State, were a significant factor for retaining the restriction. [24.1, 24.2.]

The Constitutional Court noted that the contested norm was not directed against the pluralism of ideas in Latvia or the political opinions of a certain person but rather against a person who by his activities had posed and continued to pose a threat to the independence of the Latvian State and the principles of a democratic state governed by the rule of law. At the same time, the contested norm does not prohibit a person, to who the restriction included in it applies, to be active in political parties and civic organisations. [24.3.]

The Constitutional Court found that The *Saeima* Election Law included a mechanism that allowed to examine each case individually and to verify, whether the prohibition to run for the *Saeima* election was applicable to a person. In screening the proposed candidate, the Central Election Commission, has to verify not only, whether a person's active involvement in the organisations referred to in the contested norm had been established but a court's judgement, but also, whether the person with his activities continues to pose a threat to the independence of the Latvian State and the principles of a democratic state governed by the rule of law. It is possible to appeal against the decision by the Central Election Commission in court. [24.3.]

The Constitutional Court found that the public benefit from the restriction included in the contested norm in a state, where, in view of its democratic development and also the general situation in Europe, the need existed to protect is democratic order; i.e., the integrity of the constitutional bodies of the State, exceeded the negative consequences incurred by a person, who by his activities poses a threat to the independence of the State and the principles of a democratic state governed by the rule of law, as the result of the restriction on his fundamental rights. The Constitutional Court also took into consideration the fact the legislator had the obligation to review the restriction included in the contested norm and to decide on amendments to The *Saeima* Election Law at any moment, when it was established that the political situation was changing and the foreign policy threats were decreasing. [24.4.]

#### On compliance of the contested norm with Article 91 of the *Satversme*

The Constitutional Court noted that by the contested norm the legislator had restricted the rights to run for the *Saeima* election of those citizens, who after 13 January 1991, by being actively involved in organisations referred to in the contested norm, by their actions posed a threat and still continued to pose a threat for the independence of the Latvian State and the principles of democratic state governed by the rule of law. Those citizens of Latvia, to whom the restriction included in the contested norm applies, and those citizens of Latvia, to whom this, as well as other restrictions established in the *Satversme* and The *Saeima* Election Law, do not apply, are in different and incomparable circumstances. The

Constitutional Court noted that the legislator's obligation to envisage equal treatment of persons, who were in different and in incomparable circumstances, did not follow from Article 91 of the *Satversme*. Hence, the Constitutional Court recognised that the contested norm was compatible with the first sentence of Article 91 of the *Satversme*. [25.2.]

**The Constitutional Court held:**

to recognise Para 6 of Section 5 of The *Saeima* Election Law as being compatible with Article 1, Article 9 and Article 91 of the *Satversme*.

The judgement by the Constitutional Court is final and is not subject to appeal, it shall enter into force on the day of its publication.

The judgement will be published in the official journal "Latvijas Vēstnesis" within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/10/2017-25-01\\_Spriedums.pdf#search=2017-25-01](http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/10/2017-25-01_Spriedums.pdf#search=2017-25-01)

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The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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