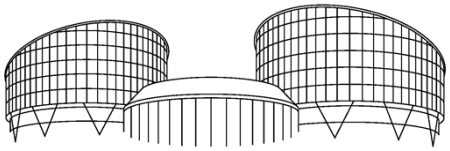

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ŽDANOKA v. LATVIA (No. 2)

(Application no. 42221/18)

JUDGMENT

Art 3 P1 • Stand for election • Removal of applicant's name from list of candidates for parliamentary elections on grounds of her past active participation in the Communist Party of Latvia and her current political activities • Case a continuation of *Ždanoka v. Latvia* [GC] and principles set out therein as to lawfulness and legitimate aim applied • Impugned restriction sufficiently foreseeable and thus lawful • Legitimate aims of protection of the State's independence, democratic order and national security • Significant change to the general context since *Ždanoka v. Latvia* [GC] with Latvia (and Europe in general) no longer enjoying the "greater stability" referred to by the Grand Chamber in that case • Following *Ždanoka v. Latvia* [GC] the respondent State increasingly had legitimate reasons to fear for its security, territorial integrity, and democratic order calling for even wider margin of appreciation in protecting those values • Legislature's limited action in respect of periodic reassessment of impugned restriction not unjustified in specific and sensitive context • Constitutional Court's fresh interpretation of impugned restriction, in view of developments, narrowing down legal basis to persons who endangered and continue to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law, within its interpretative authority and not arbitrary or unreasonable • Reasons given by the Central Electoral Commission held to be sufficient given specific case-circumstances and applicant's public profile and support of Russian Federation's actions in the Crimean Peninsula • Domestic proceedings afforded sufficient procedural safeguards against arbitrariness • Applicant able to stand and was elected in European Parliament Elections • Wide margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 July 2024

FINAL

25/10/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ždanoka v. Latvia (no. 2),

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Stéphane Pisani*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 42221/18) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms Tatjana Ždanoka ("the applicant"), on 1 March 2019;

the decision to give notice to the Latvian Government ("the Government") of the complaint under Article 3 of Protocol No. 1 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 2 July 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the removal of the applicant's name from a list of candidates for parliamentary elections on the grounds of her past active participation in the Communist Party of Latvia and her current political activities, deemed to represent a threat for the independence of Latvia and risk undermining the principles of a democratic State governed by the rule of law. The applicant complains primarily under Article 3 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1950 and lives in Riga. She was a member of the European Parliament until July 2024 (see paragraph 11 below). She was represented before the Court by Mr W.S.B. Bowring, a lawyer practising in London.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case may be summarised as follows.

I. THE GRAND CHAMBER JUGDMENT OF 2006 AND THE FACTS PRECEDING IT

5. In 1971 the applicant joined the Communist Party of Latvia ("the CPL"), which was the regional branch of the Communist Party of the Soviet Union ("the CPSU"). In March 1990 she was elected to the Supreme Council of the Latvian Soviet Socialist Republic ("the Latvian SSR"). In April 1990 she became a member of the Central Committee for Supervision and Audit of the CPL, a position that she maintained until the dissolution of the CPL in September 1991.

6. On 13 January 1991, following military operations launched on the previous day by the Soviet army against the neighbouring country of Lithuania, an unsuccessful *coup d'état* took place in Latvia. The plenum of the CPL Central Committee called for the resignation of the Latvian government, the dissolution of the Supreme Council and the assumption of full powers by the Latvian Public Rescue Committee (*Vislatvijas Sabiedriskās glābšanas komiteja*), set up on the same date by several organisations, including the CPL. On 15 January 1991 this committee announced that the Supreme Council and the government were stripped of their respective powers and declared that it was assuming full powers. After causing the loss of five civilian lives and injuries to thirty-four persons during armed clashes in Riga, this attempted coup failed.

7. On 21 August 1991, after another unsuccessful *coup d'état* in Moscow (also supported by the Central Committee of the CPL), the Supreme Council proclaimed an immediate and absolute restoration of the country's independence lost in 1940. The CPL was declared unconstitutional two days later and officially dissolved the following month.

8. In 1998 and 2002 the applicant was prevented from standing in parliamentary elections on the basis of section 5(6) of the Parliamentary Elections Act of 1995, which prevents persons having "actively participated" in the CPSU (the CPL) after 13 January 1991 from standing as candidates or being elected to the national Parliament (*Saeima*). The applicant's "active participation" in the CPL following the aforementioned date was established by the Civil Division of the Supreme Courtin a final judgment of 15 December 1999.

9. On 30 August 2000 the Constitutional Court (*Satversmes tiesa*) found the statutory restriction set out in section 5(6) of the Parliamentary Elections Act constitutional. However, it noted, firstly, that the expression "actively participated" had to be construed strictly, as only applying to those who had actually attempted to re-establish the former Soviet regime and not to any person having had formal membership in the CPSU (the CPL) after 13 January 1991. Secondly, the Constitutional Court indicated that such limitations on passive electoral rights could only be temporary, and that

Parliament should set a time-limit on them by periodically examining their necessity in the light of the political situation in the country.

10. On 16 March 2006 the Court in its Grand Chamber formation concluded that, in the particular historical and political context of Latvia, the impugned statutory restriction as applied to the applicant was neither arbitrary nor disproportionate and that the applicant's rights guaranteed under Article 3 of Protocol No. 1 had not been violated (see *Ždanoka v. Latvia* [GC], no. 58278/00, ECHR 2006-IV). It added, however:

> "135. It is to be noted that the Constitutional Court observed in its decision of 30 August 2000 that the Latvian parliament should establish a time-limit on the restriction. In the light of this warning, even if today Latvia cannot be considered to have overstepped its wide margin of appreciation under Article 3 of Protocol No. 1, it is nevertheless the case that the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end. Such a conclusion seems all the more justified in view of the greater stability which Latvia now enjoys, *inter alia*, by reason of its full European integration ... Hence, the failure by the Latvian legislature to take active steps in this connection may result in a different finding by the Court ..."

11. Since the European Parliament Elections Act of 2004 contains no provision similar to section 5(6) of the Parliamentary Elections Act, the applicant was able to stand as a candidate and was elected to the European Parliament in 2004. She was re-elected in all the subsequent elections and held the position of member of the European Parliament until July 2024.

II. THE FACTS SUBSEQUENT TO THE GRAND CHAMBER JUGDMENT OF 2006

A. Judicial and parliamentary review of the impugned restriction

12. By a judgment of 15 June 2006 the Constitutional Court reaffirmed the constitutionality of the statutory restriction contained in section 5(6) of the Parliamentary Elections Act, while also finding that a similar restriction with respect to former KGB agents was disproportionate in relation to the individual who had brought the constitutional complaint in question (for more details, see *Ādamsons v. Latvia*, no. 3669/03, §§ 77-82, 24 June 2008).

13. At the plenary meetings of 26 April 2007, 29 January 2009 and 25 February 2010, the Latvian Parliament discussed and rejected proposals to repeal section 5(6), submitted by members of the opposition. In particular, at the plenary meeting of 29 January 2009 several members of Parliament referred to the internal situation in Latvia and to the geopolitical situation in Europe, which had deteriorated since the Russian military invasion of Georgia in 2008. Likewise, during the debates of 25 February 2010, several parliamentarians noted that, given the internal situation in Latvia and the regional issues faced by Europe, the time for abolishing the impugned

restriction had not yet come. There were no further attempts to abolish it after 2010.

B. The Constitutional Court's review

1. Application to the Constitutional Court

14. In 2017 the applicant asked the Central Electoral Commission (*Centrālā vēlēšanu komisija*) whether she could now stand as a candidate for parliamentary and municipal elections. By an information letter (*uzziņa*) of 4 August 2017 the Commission responded that the statutory restriction still applied to her, and thus prevented her from standing for election.

15. The applicant lodged an application with the Constitutional Court, seeking a reassessment of the compatibility of section 5(6) of the Parliamentary Elections Act with the Latvian Constitution (*Satversme*), namely, with its Article 1 (the general principle of a democratic State), Article 9 (the right to stand for election to Parliament) and Article 91 (equality before the law and non-discrimination). She argued, among other points, that, contrary to the indications given by the Constitutional Court and by the Grand Chamber of the European Court of Human Rights, the Latvian legislature had not engaged in a regular reassessment of the necessity of the impugned restriction. She also claimed that any legitimate aim pursued by the respective norm could be reached by more lenient means, such as by informing prospective voters of a candidate's past participation in the organisations in question, through publication in the Official Gazette.

2. The Constitutional Court's judgment of 29 June 2018

16. By a judgment of 29 June 2018, the Constitutional Court upheld the constitutional validity of the impugned provision. It considered that, given the time that had elapsed since its judgments of 2000 and 2006 (see paragraphs 9 and 12 above) and the changed circumstances over that period, the matter could no longer be considered as resolved and that it warranted a fresh adjudication in the light of present-day conditions. The relevant parts of the Constitutional Court's judgment read as follows:

> "13.2. The Constitutional Court has already recognised that the aim of the impugned provision is to protect the democratic State order, national security and the territorial unity of Latvia. The impugned provision targets persons who have actively attempted to undermine the democratic State order and, in so doing, have rejected Article 1 of the Constitution....The European Court of Human Rights has also found that the purpose of the impugned provision was to protect the integrity of the democratic process rather than to punish those who had been active in the organisations referred to in the provision. The legislature was clearly motivated by prevention rather than by punishment (see the judgment of the Grand Chamber of the European Court of Human Rights of 16 March 2006 in the case of *Ždanoka v. Latvia*, ... § 122). Hence, in adopting the impugned provision, the legislature's intent was to deprive a given individual of the right to be a candidate in elections and to be elected to Parliament not only because he

or she had been active in the organisations referred to in the impugned provision after 13 January 1991, but also because, by being active in the said organisations, the individual concerned had endangered the restored independence and democratic order of the Latvian State.

The Constitutional Court is required to establish the content of the impugned provision at the present time, in 2018, that is, it must be examined in this specific moment in time. The Court must therefore examine whether the content inserted in the impugned provision at the moment of its enactment is still valid, or whether the content of the impugned provision ought to be drawn out by analysing the way in which the conditions to be taken into account in interpreting this legal norm have changed over time ... The content of a legal norm is not frozen, since every society continues to develop and its legal system also evolves accordingly. It follows that the processes that occurred following the enactment of a provision also determine its content. In consequence, the Constitutional Court will interpret the impugned provision by taking into consideration its objective aim now, in 2018, having regard to the current development of Latvia as a democratic State governed by the rule of law.

13.3. In examining the development of the Latvian legal system, the Constitutional Court takes into account the fact that various restrictions regarding participation in State activities apply to persons who, after 13 January 1991, were active in the organisations referred to in the impugned provision, are also included in other laws ...

...

The Constitutional Court notes that, in the case of Latvia, both the 'aspect of the general context of the instant case, ... that of the re-establishing of a democratic order after an undemocratic (totalitarian) regime [and the aspect] of the re-establishing of an illegally occupied State' should be taken into account (see the dissenting opinion of Judge E. Levits in ... *Ždanoka v. Latvia* [Chamber] judgment [of the European Court of Human Rights] of 17 June 2004 ...). The occupation, which lasted for fifty years, had far-reaching consequences in Latvian society which continue to influence democracy even now. A significant part of society is still open to totalitarian ideas and has a positive assessment of the period of occupation by the USSR ... The process of examining the consequences of the totalitarian regime's policies and the occupation has not yet been completed in Latvian society. This process, as shown by similar experience in other countries, is a lengthy one ...

The Constitutional Court concludes that the impugned provision is one of the tools available to a self-defending democracy that a democratic State governed by the rule of law in order to protect its constitutional bodies and State security institutions from persons who, by their actions, endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law ... [T]his applies, in particular, to a transitional period, when, with the aim of ensuring the sustainability of democracy in the country, the State might need to take special measures to defend itself ... Thus, and especially in a State where democratic traditions have not yet become fully consolidated, it might be necessary to prevent actions being taken by an individual who, after 13 January 1991, was active in the organisations referred to in the impugned provision, if such actions are directed against the national independence of Latvia and the principles of a democratic State governed by the rule of law, even if such actions do not reach the threshold of danger that could be defined [as] crimes against the State, as set out in the criminal law. A democratic State governed by the rule of law has the right to demand from persons taking public offices loyalty to the State and, in particular, to the constitutional principles on which it is based (see the decision of the European Court of Human Rights of 18 November 2014 in the case of *Spūlis and Vaškevičs v. Latvia*,

applications nos. 2631/10 and 12253/10, § 42). Thus, all aspects of the aim of the impugned provision must be examined, that is, of its objective meaning, which also comprises protection of the national independence of Latvia and the principles underpinning Latvia as a democratic State governed by the rule of law ... against persons who [might] endanger them if working in constitutional bodies and security institutions. The concept of 'active participation' included in the impugned provision denotes actions that are contrary to the aim of this provision.

13.4. In view of the above, the impugned provision must be interpreted to mean that it prohibits from standing for parliamentary elections a person who, by actively participating in the CPSU (the CPL), the Internationalist Front of Workers of the Latvian SSR, the United Council of Labour Collectives, the Organisation of War and Labour Veterans or the Latvian Public Rescue Committee, or in the regional committees thereof ,after 13 January 1991, has by his or her actions endangered and still continues to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law. An action directed against the independence of the Latvian State and the principles of a democratic State governed by the rule of law may consist, *inter alia* – but not exclusively – in denying the [existence of] the independent State, actions directed against its democratic order, [or] supporting international crimes.

...

19. ... A specific restriction is clearly entailed by the impugned provision; it prohibits a person who, by actively participating in the organisations referred to in the impugned provision, has by his or her actions endangered, and still continues to endanger, the independence of the Latvian State and the principles of a democratic State governed by the rule of law, from standing as a candidate for parliamentary elections, since the aim of the impugned provision has not substantially changed over time. The original intent of the legislature in enacting the impugned provision, namely, the protection of a constitutional body (the legislature) from persons who, by their actions, have endangered and still continue to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law, continues to be the objective aim of this norm as the legal system currently stands. The content of the restriction is comprehensible, and the consequences of its application are foreseeable. Consequently, the impugned provision has been worded with sufficient clarity and the consequences of its application are predictable.

It follows that the restriction of fundamental rights included in the impugned provision has been established by law.

...

23. ... The Constitutional Court considers [as follows]: although Latvia is a Member State of the European Union, NATO, the Council of Europe, the Organisation for Economic Co-operation and Development, and of other organisations, this circumstance does not *per se* exclude possible threats to the Latvian State. [According to an expert opinion heard by the Court], Latvia's integration in the European Union could be regarded as important indirect evidence of the stability of Latvia's democracy; however, it is far from being direct evidence of it. Likewise, the time elapsed since the restoration of Latvia's independence is not the sole or the most significant factor in ensuring the stability of a democratic regime ... The Security Police note that the level of democratisation of Latvian State has increased over time; however, Latvia's membership of certain international organisations or the length of this membership cannot be regarded as a sufficient yardstick of stability ...

Analysing the political situation in the country, and throughout Europe as a whole, the Constitution Protection Bureau and the Security Police point to the possible threats that could be incurred by the Latvian State, its democratic order and security if the restriction established in the impugned provision were to be revoked ... Moreover, as noted above, democracy is far from being perceived as an undisputable reality in Latvian society. The impugned provision is one of the tools that currently ensure the protection of Latvia's national independence and the principles of a democratic State governed by the rule of law.

In protecting its democratic order, the State has the right to assess independently the degree to which it is endangered and to decide whether to retain the restriction in the future. If the legislature, exercising its discretion, has decided that the restriction included in the impugned provision continues to be necessary, then a regulation which would allow the individual concerned to stand in parliamentary elections, subject only to a requirement that he or she provide [public] information about previous participation in one of the organisations referred to in the impugned provision, cannot be deemed to be a more lenient measure. In view of the above, it must be concluded that the measure suggested by the applicant would not ensure protection of a democratic State order to the same degree as that is ensured by the restriction imposed in the impugned provision.

Thus, the legitimate aim cannot be reached by other measures with the same quality ...

24.1. ... The Constitutional Court notes that the legislature last examined the substance of the restriction included in the impugned provision in 2010. The Constitutional Court finds [as follows]: although neither the Convention nor the Constitution lays down the frequency of the legislature's regular review of a particular restriction on an individual's right to stand for election, the fact that Parliament has not reviewed this restriction since 2010 should be assessed negatively. However, within the system of Latvia's constitutional bodies the Constitutional Court also has jurisdiction to verify whether there is a reasonable justification for keeping the restriction ... , that is, whether or not this restriction has been set arbitrarily. The Constitutional Court must therefore ascertain whether there are circumstances which currently justify maintaining this restriction.

24.2. In assessing whether there is a reasonable justification for retaining the restriction on fundamental rights included in the impugned provision after 2010, both the democratic development of the State and the external threats to national security must be taken into account. One of the factors which justified the retention of this restriction until 2010 was Russia's aggression against Georgia... As noted by the Security Police and the Constitution Protection Bureau, following Russia's aggression in Ukraine the political situation in the region deteriorated, and this factor has a direct impact on national security.... The Annual Report of the Constitution Protection Bureau for 2016 notes: '*The most significant threats to security are created by Russia: its aggression in Ukraine; the demonstration of military power and acts of provocation in the direct vicinity of NATO's external borders; elements of an information war and hybrid warfare directed against the neighbouring States*' ... The conclusion that the most fundamental threat to Latvia's national security arises from Russia's aggressive foreign policy is also made in the 2017 Annual Report of the Constitution Protection Bureau ... As regards internal threats, the Security Police emphasises that it has repeatedly noted in its annual reports that persons who were previously active in the organisations referred to in the impugned provision are [still] expressing opinions contrary to national security and the national interest and are engaging in actions against them ...

The Constitutional Court notes that in the context of the democratic development of the Latvian State these external and internal threats are a significant factor which justifies maintaining the restriction.

24.3. The impugned provision is not directed against pluralism of ideas in Latvia or the political views of a particular individual, but rather against persons who, by their actions, endangered and continue to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law (see, for example, the judgment of the European Court of Human Rights of 1 June 2015 in the case of *Petropavlovskis v. Latvia*, application no. 44230/06, §§ 69-70). It must also be noted that the impugned provision does not prohibit the person [concerned] from being actively engaged in political parties and associations.

Moreover, the restriction on a person's rights included in the impugned provision is not arbitrary and is sufficiently individualised. As previously stated, the impugned provision [only concerns those who], by their actions, have endangered and still continue to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law.

Pursuant to sections 13(2)(6) and 13(3)(6) of the Parliamentary Elections Act, the Central Electoral Commission is to strike any person to whom the impugned provision applies out of the submitted list of candidates. In accordance with section 13-1 (1) of the same Act, a decision of the Central Electoral Commission to strike a candidate out of a registered list of candidates can be appealed against within three working days following [its] adoption. Section 54 of the [same] Act provides that the appeal is to be lodged with the Regional Administrative Court, which will examine the case in the first instance and deliver a ruling within seven days following the receipt of [the decision].

Thus, the Parliamentary Elections Act comprises a mechanism which allows for an individual assessment of each case and verification whether the prohibition on standing for parliamentary election is applicable to the [specific] person. The Constitutional Court has already recognised that the Central Electoral Commission, rather than being a mere technical bureau or an intermediary institution, is the highest governing body, which must strictly ensure that all laws applicable to parliamentary elections are correctly applied and enforced ... When screening the proposed candidate, the Central Electoral Commission must ascertain not only whether a person's active involvement in the organisations referred to in the impugned provision has been established by a court judgment but also whether that person, by his or her actions, still continues to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law. In order to verify this, in accordance with section 11 of the Central Electoral Commission Act, the Central Electoral Commission has the right to request information from State and local government officials or to summon them to its meetings.

24.4. The Constitutional Court concludes that, in a State where, in view of its democratic development and the general situation in Europe, the democratic order, that is, the integrity of its constitutional bodies; requires protection, the public benefit from the restriction included in the impugned provision outweighs the adverse consequences that are caused to a person who, by his or her actions, endangers the independence of the State and the principles of a democratic State governed by the rule of law ... It should be noted that if it is established at any time that the political situation in the country has changed or that the foreign-policy threats have diminished, the legislature is under an obligation to review the restriction in the impugned provision and to decide on amendments to the Parliamentary Elections Act.

> Thus, the [impugned] restriction complies with the principle of proportionality and, consequently, the impugned provision, provided that it is properly interpreted, is compatible with Articles 1 and 9 of the Constitution.
>
> 25. The appellant also alleges that, in establishing the rules by which a person's right to stand for parliamentary elections are to be exercised, the legislature did not comply with the principle of equality.
>
> ...
>
> Since the persons [concerned] are not in similar and mutually comparable circumstances, the impugned provision is compatible with ... Article 91 of the Constitution."

17. One of the seven members of the Constitutional Court expressed a dissenting opinion. In his view, the way in which the majority had interpreted section 5(6) of the Parliamentary Elections Act and other relevant provisions of domestic law had exceeded the objective aim and contents of those provisions as intended by the legislature. By introducing an additional condition of "still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law", the majority's judgment had endowed the Central Electoral Commission with a substantially new task: assessing the merits of an individual candidate's case – that is, whether he or she still posed a threat for independence and democracy – which had not originally been intended. The Commission was supposed to take decisions only on the basis of data established by a court judgment or provided by other State institutions as specified by law, without itself having any margin of appreciation. By granting it such a margin and such new powers, the majority had failed to have regard to the principle of legal certainty and had weakened the existing system, which protected candidates from arbitrariness. Moreover, after its scope had been narrowed down by the Constitutional Court, the impugned provision now applied to only one or two persons; this made it into an *ad hominem* law, incompatible with the principle of equality. Finally, the dissenting judge considered that the restriction in question, linked to an individual's political activities in 1991, was in any event disproportionate and unjustified twenty-seven years after the events.

C. The applicant's disqualification from standing for election

1. Proceedings before the Central Electoral Commission

18. With a view to participating in the parliamentary elections of 6 October 2018, the political party "Latvian Union of Russians" ("*Latvijas Krievu savienība*") submitted lists of candidates for each of the five plurinominal constituencies of Latvia. The applicant's name appeared on the list as candidate number one for the constituency of Vidzeme. The Central Electoral Commission registered the lists by a decision of 8 August 2018. On the same day, it requested opinions from the Constitution Protection Bureau

and the Security Police as to whether the applicant's current activities were endangering Latvia's independence and democratic order. It appears that at least some of the data provided by the Security Police were classified and were not disclosed to either the applicant or her legal representative.

19. On 21 August 2018 the Central Electoral Commission held a hearing at which the applicant was present. Having heard information received from the intelligence services to the effect that the applicant's activities endangered Latvia's independence and democratic order, the Commission invited the applicant to express her opinion, which she declined to do. By a decision taken on the same day at the close of the hearing, the Commission struck the applicant's name out of the list of candidates. Relying on section 5(6) of the Parliamentary Elections Act as interpreted by the Constitutional Court in its judgment of 29 June 2018 (see paragraph 16 above), the Commission found it undisputed that the applicant had "actively participated" in the CPL after 13 January 1991 and that the first of the two criteria implicit in the provision in question was therefore fulfilled. As to the second criterion, the Commission stated the following:

> "In order to establish whether the candidates included in the submitted lists fulfil the requirements of section 4 of the Parliamentary Elections Act, the Central Electoral Commission sent the list of candidates to the competent institutions mentioned in section 13(2) of the same Act.
>
> Relying on [the judgment of the Constitutional Court of 29 June 2018] and in accordance with section 11 of the Central Electoral Commission Act, the Central Electoral Commission sent a request to the Constitution Protection Bureau [*Satversmes aizsardzības birojs*] and the Security Police [*Drošības policija*] for information as to whether Tatjana Ždanoka, by her actions, endangers the independence of the Latvian State and the principles of a democratic State governed by the rule of law.
>
> By a letter sent in reply on 14 August 2018, the Constitution Protection Bureau indicated that, according to its assessment, the actions of Tatjana Ždanoka constitute a threat for the democratic State order and national security.
>
> By a letter sent in reply on 15 August 2018, the Security Police indicated that, according to the information at [its] disposal, over the long term and even today, Tatjana Ždanoka has created a threat for the interests of national security and the democratic State order.
>
> ...
>
> 6. With regard to the second condition – that the person, by his or her actions, still continues to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law – the Central Electoral Commission notes the following.
>
> ...
>
> 8. ... [I]n assessing the activities of T. Ždanoka, one must conclude that her actions at moments that were crucial for society and the State allow us to reach a clear and unequivocal conclusion. Thus, the support publicly expressed by Tatjana Ždanoka for the annexation of Crimea (Ukraine), as well as her participation as an observer in elections in annexed Crimea, threaten the long-term sustainability of democracy, State

independence and other principles of a democratic state governed by the rule of law (see the Annual Report of the Security Police (2014), p. 15). Such a public expression of support is both openly contrary [*klaji pretēja*] to Latvia's international interests and threatens Latvia's national security; this creates reasonable grounds for doubting [this] person's intentions, as well as [her] ability to promote the long-term sustainability of Latvia as a democratic Western State, [the country's] successful development, and the implementation of values typical of Europe.

9. Tatjana Ždanoka is an activist for the so-called 'compatriot policy' [*tautiešu politika*] being conducted by Russia. By means of this policy, Russia is trying to attract Latvia, as well as other neighbouring countries, into the sphere of its political and economic influence, in order to ensure that they operate in a manner that corresponds to Russia's interests. The importance of the 'compatriot policy' grows every year, creating increased threats for the security of the constitutional order of the State of Latvia (see the Annual Report of the Security Police (2014), p. 10). Activists for Russia's 'compatriot policy' in Latvia have tried to obtain greater support among the ethnic minorities of Latvia by manipulating the topics of education and non-citizens in the context of the military conflict in Ukraine (see the Annual Report of the Security Police (2014), p. 10). Consequently, as a result of the 'compatriot policy' carried out by Russia, the Latvian people are being split, population groups are being artificially polarised, mutual ethnic tensions within Latvian society are being exacerbated, and the existing order is being destabilised.

10. Tatjana Ždanoka has on several occasions visited Crimea, illegally annexed by Russia; her party, the Latvian Union of Russians, has organised, in Riga, an event dedicated to the memory of the victims of the Odesa tragedy of 2014. These events were dominated by narratives on both historical and current political events that have been created by Russian ideologists and are favourable to Russia (see the Annual Report of the Security Police (2015), p. 14). Tatjana Ždanoka has cooperated in creating propaganda, not only at these events, but also on various Russian television shows. She has also expressed an opinion on domestic and international events ... that is favourable to Russia's foreign-policy interests but contrary to Latvia's national-security interests (see the Annual Report of the Security Police (2014), p. 15). In addition, Russian compatriot activists have spread false information about the activities, within the Baltic States, of military troops from the NATO allies and discredited the overall image of the Latvian State (see the Annual Report of the Security Police (2016), p. 16). As a result, as the Security Police point out, the presence of Russia in Latvia was fostered. Furthermore, by declaring that the forcible assimilation of Russian-speaking residents in Latvia was being planned, Tatjana Ždanoka polarised and tried to divide Latvian society (see the Annual Report of the Security Police (2017), p. 18).

11. Tatjana Ždanoka's activities and the opinions expressed by her, listed in points 8, 9, and 10 of the [present] decision, as well as her other public activities and opinions, point to the fact that [she] continues to act against the interests of the Republic of Latvia, and creates a threat for the independence of the Latvian State and the principles of a democratic State governed by the rule of law."

2. Proceedings before the Regional Administrative Court

20. The applicant challenged the Commission's decision by way of an appeal to the Regional Administrative Court (*Administratīvā apgabaltiesa*), the first and last instance in such cases. She complained that she had not been allowed to consult the report of the Security Police submitted to the Central

Electoral Commission in her case. In her view, the Commission's decision had been arbitrary, in that neither the legislature nor the Commission itself had established a procedure to verify whether a given candidate "still continue[d] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law". The decision had been based on the Security Police's public annual reports, which did not properly distinguish between the applicant's current actions, her activities in the distant past, and the activities of various unnamed "activists" to whom she was unconnected. In any event, the applicant argued that the activities for which she was criticised were nothing more than the exercise of political pluralism and democracy. Even if her opinions on certain issues were contrary to the official stance of the Latvian government, this fact did not in itself justify a restriction of her fundamental rights. The applicant expressly relied on Articles 10 and 11 of the Convention and Article 3 of Protocol No. 1, as well as the corresponding provisions of the Latvian Constitution.

21. The Regional Administrative Court examined the applicant's appeal as a panel of three judges at a hearing on 3 September 2018. The applicant, her legal representative and a representative of the Central Electoral Commission were present and were heard. At the beginning of the hearing, the representative of the Security Police declared that he did not object to the applicant familiarising herself with the classified information that had been sent by the Security Police to the Commission at the latter's request. Following a request by the applicant's representative, the court ordered a fifteen-minute break so that he could familiarise himself with the relevant documents. Part of the hearing, during which the representative of the Security Police made a statement, was held in *camera*; both the applicant and her representative were present and were able to put additional questions to the speaker. The representative of the Security Police subsequently commented on the applicant's appeal during the open part of the hearing.

22. By a final judgment delivered at the close of the hearing of 3 September 2018, the court dismissed the applicant's appeal. Pointing out that the interpretation of a legal provision by the Constitutional Court was binding on State authorities (see paragraph 28-29 below), it held that the impugned decision of the Central Electoral Commission was compatible with the Parliamentary Elections Act as interpreted by the Constitutional Court's judgment of 29 June 2018. As the Commission was not entitled to collect the relevant data itself, it could only rely on the information provided by the State intelligence agencies which, in the present case, had persuasively shown that the applicant's current activities were dangerous for the democratic State order and national security. In these circumstances, the Central Electoral Commission was not required to make a separate assessment as to whether, in the specific case, the impugned restriction was provided by law, whether it pursued a legitimate aim and whether it was proportionate to that aim, as this had already been done by the Constitutional Court. Lastly, with regard to the

confidential report by the Security Police, the court pointed out that the confidentiality of that document had been lifted after the Commission's hearing, thus enabling the applicant's representative to consult it.

23. At the parliamentary elections of 6 October 2018, the applicant's party received 3.2% of the votes cast at national level. Having failed to reach the threshold of 5% set out in the law (see *Partija "Jaunie Demokrāti" and Partija "Mūsu Zeme" v. Latvia* (dec.), nos. 10547/07 and 34049/07, 29 November 2007), it did not win any seats in Parliament.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION

24. The relevant provisions of the Constitution (*Satversme*) of the Republic of Latvia, adopted in 1922 and amended by the Law of 15 October 1998, are worded as follows:

Article 1

"Latvia is an independent and democratic republic."

Article 9

"All citizens of Latvia who enjoy full civic rights and who have reached the age of 21 on the day of the elections may be elected to Parliament."

Article 91

"All persons in Latvia shall be equal before the law and the courts. Human rights shall be exercised without discrimination of any kind."

Article 101

"All citizens of Latvia are entitled to participate, in accordance with the law, in the activities of the State and of local government ..."

II. LEGISLATIVE PROVISIONS

A. The Parliamentary Elections Act

25. The relevant provisions of the Parliamentary Elections Act (*Saeimas vēlēšanu likums*) of 25 May 1995 read as follows:

Section 4

"All Latvian citizens who have reached the age of 21 on the date of the elections may be elected to Parliament, on condition that they are not concerned by one of the restrictions provided for in section 5 of the present Act."

Section 5

"The following may not stand as candidates in elections or be elected to Parliament:

...

(6) persons who actively participated [*darbojušās*] after 13 January 1991 in the CPSU (CPL), the Internationalist Front of Workers of the Latvian SSR, the United Council of Labour Collectives, the Organisation of War and Labour Veterans or the Latvian Public Rescue Committee, or in their regional committees; ..."

Section 13

"...

(2) Once registered, the candidate lists are definitive, and the Central Electoral Commission may make only the following corrections:

1. removal of a candidate from the list, where: ...

(a) the person has no right to stand as candidate in parliamentary elections;

...

(3) ... [A] candidate shall be removed from the list on the basis of a statement from the relevant authority or of a court decision. The fact that the candidate:

...

6. actively participated after 13 January 1991 in the CPSU (CPL), the Internationalist Front of Workers of the Latvian SSR, the United Council of Labour Collectives, the Organisation of War and Labour Veterans or the Latvian Public Rescue Committee, or in their regional committees, shall be attested by a judgment of the relevant court; ..."

Section 13-1

"(1) A decision of the Central Electoral Commission ... striking a candidate out of a registered list of candidates shall be subject to appeal before a court within three working days from the adoption of that decision.

(2) In order to enforce a court judgment annulling a decision referred to in paragraph 1 of this section, the Central Electoral Commission shall register or remove the respective candidate from the list, or restore the declared candidate to the registered candidate list, or strike him or her off it."

Section 54

"(1) In the cases referred to in section 13-1(1) of this Act, the appeal shall be lodged with the Regional Administrative Court ...

(2) The court shall adjudicate the case as a first-instance court. The case shall be examined by a panel of three judges.

...

(4) The appellant shall give reasons of his or her appeal. The burden of proof is on the parties to the administrative proceedings.

...

(6) The judgment of the court ... [is] not subject to appeal."

B. The Central Electoral Commission Act

26. The relevant provisions of the Central Electoral Commission Act (*Likums "Par Centrālo vēlēšanu komisiju*") of 13 January 1994 read as follows:

Section 2

"The Central Electoral Commission shall consist of nine members [who are] voters. The chairperson of the Central Electoral Commission and seven members ... shall be elected by Parliament, whereas one member shall be elected from among judges by the Plenum of the Supreme Court.

..."

Section 4

"The Central Electoral Commission shall ensure the enforcement of the Parliamentary Elections Act ..., as well as a uniform and accurate application [thereof]; it shall verify correct enforcement of [this Act].

When fulfilling its obligations and exercising its rights, the Central Electoral Commission shall act within the scope of the laws and regulations in force."

Section 11

"... The Commission has the right to invite to its meetings officials of ministries, departments, and other State and local government authorities, and to hear them in matters related to the preparation and procedure of elections, national referendums or legislative initiatives."

C. Other laws restricting the rights of former active members of the CPL

27. Several other laws in force impose restrictions on the same category of persons as those defined in section 5(6) of the Parliamentary Elections Act, namely:

(a) section 9(5) of the Municipal Council Elections Act (*Pašvaldības domes vēlēšanu likums*) of 13 January 1994 disqualifies them from standing as candidates and from being elected to a local government council;

(b) under section 3(6) of the Election of State President Act (*Valsts prezidenta ievēlēšanas likums*) of 3 May 2007, a person belonging to the above category cannot be elected (by Parliament) as the President of Latvia;

(c) under section 12 of the Structure of the Cabinet of Ministers Act (*Ministru kabineta iekārtas likums*) of 15 May 2008, a person disqualified from standing for election under the Parliamentary Elections Act cannot be a member of the Cabinet of Ministers (Prime Minister or minister);

(d) section 20(1)(12) of the State Security Institutions Act (*Valsts drošības iestāžu likums*) of 5 May 1994 precludes that category of persons from being officers or employees of State security institutions;

(e) under section 11(1)(6) of the Citizenship Act (*Pilsonības likums*) of 22 July 1994, these persons cannot obtain Latvian nationality by way of naturalisation. Unlike the previously cited laws, this provision also applies to the former members of the Union of Communists of Latvia (*Latvijas komunistu savienība*).

D. The interpretive powers of the Constitutional Court

28. Section 32(2) of the Constitutional Court Act (*Satversmes tiesas likums*) of 5 June 1996 provides:

> "The Constitutional Court's judgment and the interpretation of the relevant legal norm provided therein shall be binding upon all State and local government authorities (including courts) and [their] officials, as well as upon natural and legal persons."

29. Pursuant to section 17(5) of the Administrative Procedure Act (*Administratīvā procesa likums*) of 25 October 2001:

> "If the Constitutional Court has interpreted the relevant legal provision in its judgment, a [public] institution and a court shall apply this interpretation."

THE LAW

I. PRELIMINARY REMARK

30. The Court notes that in her observations of 22 July 2021 on the admissibility and merits of the application the applicant declared that she "maintain[ed] her Article 6 complaint as pleaded". The Court observes that it has already declared that complaint inadmissible (decision of 18 February 2021 by the President of the Section, acting as a single judge in accordance with Rule 54 § 3 of the Rules of Court). Pursuant to Article 27 § 2 of the Convention, this decision is final. This part of the complaint is thus no longer pending before the Court, which lacks jurisdiction to take cognisance of it. In any event, the Court reiterates that Article 6 of the Convention does not apply to electoral disputes such as that in the present case (see *Pierre-Bloch v. France*, 21 October 1997, §§ 50-59, *Reports of Judgments and Decisions* 1997-VI; *Mugemangango v. Belgium* [GC], no. 310/15, § 96, 10 July 2020; and *Ždanoka v. Latvia* (dec.), no. 58278/00, 6 March 2003).

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

31. The applicant complained that her continuing disqualification from standing for election to the national parliament after the judgment of

16 March 2006 in *Ždanoka v. Latvia* [GC], no. 58278/00, ECHR 2006-IV, constituted a violation of Article 3 of Protocol No. 1, which provides:

> "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."

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicant argued that her disqualification from standing for election was not "established by law" due to the lack of foreseeability induced by the judgment of the Constitutional Court of 29 June 2018. Section 5(6) of the Parliamentary Elections Act related only to the applicant's political stance during the crucial events of 1991 and not to her current or recent conduct. The Constitutional Court had no power to amend that section; nevertheless, by adding another criterion linked to entirely extraneous considerations (such as the current geopolitical situation in Europe), it gave it an unforeseeable interpretation prejudicial to the applicant. As to the Government's reference to the "living instrument" doctrine defined by the Court's case-law, the applicant asserted that it had never been intended to be used in such a manner.

34. The applicant further submitted that, even if the Grand Chamber's indication as to the constant and periodic review of the impugned restriction was not a formally binding order, it was clear and strongly worded guidance that the respondent State should have taken into account, and it should have acted accordingly. However, this had not been done. The applicant disputed the distinction, drawn by the Government, between an obligation of procedure or process and an obligation of result; in her view, such a distinction had no basis in the Court's case-law. In particular, the reasons adduced by members of Parliament during parliamentary debates, by the Constitutional Court in its judgment of 2018, and by the Government in their observations before the Court were irrelevant and unjustified. The armed conflicts between Russia and Georgia and between Russia and Ukraine were not the only conflicts or disturbances within the territory of the Council of Europe after 2006 (there were conflicts, for example, between Armenia and Azerbaijan, or in Northern Ireland); the applicant was not responsible for any of them, and they could not justify barring her from standing for election. There was no internal armed conflict in Latvia and no threat of such a conflict.

In any event, 30 years had passed since the 1991 events, 25 years since the enactment of the Parliamentary Elections Act, and 15 years since the Grand Chamber judgment in the applicant's previous case. Throughout that period, Latvia had remained a stable, prosperous and peaceful member of the Council of Europe, the European Union, and, since 2016, the Organisation for Economic Co-operation and Development. In these circumstances, the applicant's continuing disqualification from standing for election was clearly disproportionate to any legitimate aim that it might have pursued.

35. As to the applicant's recent and current public activities, they constituted nothing but an expression of her political opinions, to which she was entitled. The applicant pointed out that she had never committed any criminal or regulatory offence under Latvian law and had therefore never been prosecuted or convicted on any grounds.

36. Lastly, the applicant argued that the procedure that had led to her disqualification was not procedurally adequate and did not offer sufficient safeguards against arbitrariness. In particular, some of the evidence relied upon by the Central Electoral Commission and the Regional Administrative Court had never been declassified, despite the applicant's request. To sum up, the decision to bar the applicant from standing for election in 2018 had been fatally marred by arbitrariness and therefore constituted a violation of Article 3 of Protocol No. 1.

(b) The Government

37. The Government argued that the impugned interference with the applicant's passive electoral right was compatible with Article 3 of Protocol No. 1. Firstly, it was "prescribed by law" within the meaning of the Court's case-law, that is, both accessible and foreseeable. The legal basis for the applicant's disqualification from standing for Parliament was based on the clear provision of section 5(6) of the Parliamentary Elections Act as interpreted by the Constitutional Court in its judgment of 29 June 2018. In this connection, the Government emphasised that in the Latvian constitutional system the Constitutional Court has the authority to establish a universally binding interpretation of statutes (see paragraphs 28-29 above).

38. Secondly, according to the Government, the impugned restriction pursued the same legitimate aims as those defined in the Constitutional Court's judgments of 15 June 2006 and 29 June 2018, namely, protection of Latvia's independence, democratic order, and national security in the specific present-day conditions.

39. Thirdly, as to the proportionality of the contested restriction, the Government pointed out, first and foremost, that in its judgment of 16 March 2006, the Grand Chamber had found no violation of Article 3 of Protocol No. 1. Consequently, this judgment could not create any formal obligations for the respondent State in terms of "execution" within the meaning of Article 46 of the Convention. Even assuming that there could be

an obligation stemming from paragraph 135 of that judgment (see paragraph 10 above), it could only be an obligation of procedure or process, and not of a predetermined result; to argue the contrary would go against the principle of subsidiarity underpinning the entire Convention system. The Government emphasised that after the delivery of the aforementioned Grand Chamber judgment, the impugned statutory restriction had been reviewed by Parliament on three occasions and twice examined by the Constitutional Court. In the Government's view, such a review was both "constant" and "periodic".

40. The Government further reiterated that according to the Court's own case-law, the Convention was a living instrument, to be interpreted in the light of present-day conditions. In this regard, they contended that in its judgment of 16 March 2006 the Grand Chamber had expressly linked the necessity for periodic reassessment to the European reality in 2006. In other words, that judgment reflected the reality of 2006, when Latvia had already been a member of the Council of Europe and the Convention system for Almost a decade and had also recently joined the European Union. The Grand Chamber had rightly underlined the fact of European integration as a guarantee of regional security, since, in 2006, this indeed implied a certain degree of constitutional stability, in that a majority of European countries had completed a peaceful constitutional transition towards effective political democracy, entailing a common understanding and observation of human rights and the rule of law. However, as soon as 2008, regional stability and security began to deteriorate, especially after the Russian Federation's aggression against Georgia in August 2008. The situation further worsened after the Russian Federation's annexation of Ukraine's Autonomous Republic of Crimea in 2014, and the subsequent outbreak of hostilities in Eastern Ukraine, resulting in the occupation of the Donbass region. These hostilities remained active, and the annexation of Crimea still persisted, adversely influencing stability and safety in the entire European region.

41. With regard to the specific situation in Latvia, the Government referred to the data and opinions submitted to the Constitutional Court by the national security agencies and other authorities and experts in the proceedings leading to the judgment of 29 June 2018. In the unanimous opinion of these authorities and experts, the contemporary political and geopolitical context in Latvia was different from the situation in 2006. Despite Latvia's membership of the European Union and NATO, the activities of foreign intelligence services in Latvia had only increased in the intervening period. Moreover, information gathered via intelligence and counter-intelligence measures indicated that several organisations, including political parties, were taking active steps to divide and polarise Latvian society by spreading narratives that were endorsed by the Russian Federation and highly critical of the Latvian State's policies – for example, by alleging forced mass assimilation of ethnic minorities by Latvia. Moreover, these organisations and their activists,

including the applicant, actively promoted Russia's so-called "compatriot policy", which consisted in protecting the rights and interests of Russians and Russian-speaking people living in neighbouring countries, with a view to promoting Russia's geopolitical and economic interests and establishing its influence in those countries. The Government contended that the same "compatriot policy" had been used, *inter alia*, to justify Russia's annexation of Crimea and the aggression in Eastern Ukraine. It was in this present-day general context that the Constitutional Court had examined the constitutionality of section 5(6) of the Parliamentary Elections Act.

42. The Government pointed out that the initial logic of the impugned restriction, whereby the scope and conditions of ineligibility were determined in detail by the legislature, leaving the courts with the sole task of verifying whether a particular individual belonged to the category or group covered by the statutory measure at issue, had been examined by the Grand Chamber in its judgment of 2006 and found to be compatible with Article 3 of Protocol No. 1. In other words, there was no obligation under that provision to delegate more extensive jurisdiction to the domestic courts to "fully individualise" the situation of each individual candidate. Conversely, in 2018, in the light of the political and geopolitical realities of that moment, the Latvian Constitutional Court emphasised the need to follow an individualised approach towards each of the persons concerned and to assess not only the fact of their past participation in the CPL but also their current conduct. Moreover, the Constitutional Court's judgment of 2018 also provided clear and detailed guidance to the domestic authorities on how to apply that individualisation in establishing whether an individual who had been found to endanger Latvia's independence and democratic order in the past continued to do so in the present.

43. As to the applicant's specific case, the Government pointed out that, according to the findings of the Central Electoral Commission and confirmed by the Regional Administrative Court, she was not only a promoter of Russia's "compatriot policy" but had also openly supported the unlawful annexation of the Autonomous Republic of Crimea by that State. Thus, on 10 March 2014, after the armed forces of the Russian Federation had attacked and seized the Ukrainian military bases in Crimea, the applicant's party (the Latvian Union of Russians) organised a rally in Riga in support of Russia's actions; the applicant attended that rally as one of the party's spokespersons. Six days later the applicant was present as an "independent observer" at the referendum in Crimea, held with a view to incorporating that region into the Russian Federation. The Government emphasised that international organisations, such as the United Nations, the Organisation for Security and Co-operation in Europe and the European Union, had condemned this referendum and distanced themselves from it. In this regard, the Government explained that the applicant's actions had to be seen against the specific historical background of Latvia which, in 1940, had *de facto* lost its

independence in line with a pattern of events similar to that played out in Crimea: foreign military occupation, followed by staged undemocratic elections and a subsequent so-called "voluntary" annexation by the Soviet Union. Furthermore, in her capacity as a member of the European Parliament the applicant had organised several rallies in front of the European Parliament building in Brussels, demanding that Europe recognise the results of the unlawful elections held in the occupied Donbass region of Eastern Ukraine.

44. To sum up, in the Government's opinion, the applicant's current activities constituted a sufficient basis for the domestic authorities to conclude that she had supported and continued to support actions by a foreign power that were manifestly contrary to the generally recognised principles of international law and dangerous for Latvia's independence and democratic order. The Government also argued that, unlike the applicant in the case of *Ādamsons*, cited above, the applicant in the present case had shown consistent opposition to the restoration of Latvia's independence and democratic order both in 1991 and over the following three decades (ibid., §§ 128-29). In these circumstances, the applicant's disqualification from standing for Parliament was justified and proportionate to the legitimate aims indicated above.

45. Lastly, the Government considered that the proceedings that had led to the applicant's exclusion from the candidate list – first before the Central Electoral Commission, then before the Regional Administrative Court – had afforded the applicant sufficient procedural safeguards against arbitrariness, in accordance with the Court's relevant case-law. In particular, the applicant and her representative were given the possibility to acquaint themselves with previously classified material of the Security Police during the court hearing, and neither of them had ever voiced any objection or made any additional procedural requests.

2. The Court's assessment

(a) General principles

46. The applicable general principles are summarised in *Ždanoka v. Latvia* [GC], cited above, §§ 98-115, and *Tănase v. Moldova* [GC] (no. 7/08, §§ 154-161, ECHR 2010).

47. Concerning in particular the duty of loyalty that may be required from both current and prospective members of Parliament, the Court has stated (see *Tănase*, cited above, §§ 166-167):

> "166. For its part, the Court would distinguish at the outset between loyalty to the State and loyalty to the government. While the need to ensure loyalty to the State may well constitute a legitimate aim which justifies restrictions on electoral rights, the latter cannot. In a democratic State committed to the rule of law and respect for fundamental rights and freedoms, it is clear that the very role of MPs, and in particular those members from opposition parties, is to represent the electorate by ensuring the accountability of the government in power and assessing their policies. Further, the pursuit of different, and at times diametrically opposite, goals is not only acceptable but necessary in order

> to promote pluralism and to give voters choices which reflect their political opinions. As the Court has previously noted, protection of opinions and the freedom to express them is one of the objectives of the freedoms guaranteed by the Convention, and in particular Articles 10 and 11. This principle is all the more important in relation to MPs in view of their essential role in ensuring pluralism and the proper functioning of democracy ...
>
> 167. As to what loyalty is required from MPs to the State, the Court considers that such loyalty in principle encompasses respect for the country's Constitution, laws, institutions, independence and territorial integrity. However, the notion of respect in this context must be limited to requiring that any desire to bring about changes to any of these aspects must be pursued in accordance with the laws of the State. Any other view would undermine the ability of MPs to represent the views of their constituents, in particular minority groups. The Court has previously emphasised that there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. Similarly, in the present case, the fact that Moldovan MPs with dual nationality may wish to pursue a political programme which is considered by some to be incompatible with the current principles and structures of the Moldovan State does not make it incompatible with the rules of democracy. A fundamental aspect of democracy is that it must allow diverse political programmes to be proposed and debated, even where they call into question the way a State is currently organised, provided that they do not harm democracy itself ..."

48. Moreover, Article 3 of Protocol No. 1 contains certain positive obligations of a procedural character, requiring, in particular, the existence of a domestic system for the effective examination of individual complaints and appeals in matters concerning electoral rights. The existence of such a system is one of the essential guarantees of free and fair elections and is an important safeguard against arbitrariness in the electoral process. In particular, the decision-making process concerning electoral rights and challenges to election results must be accompanied by adequate and sufficient safeguards ensuring, in particular, that any arbitrariness can be avoided. In particular, the decisions in question must be taken by a body which can provide sufficient guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be excessive; it must be circumscribed with sufficient precision by the provisions of domestic law. Lastly, the procedure must be such as to guarantee a fair, objective and sufficiently reasoned decision (see *Mugemangango*, cited above, §§ 69-70). A law which confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 250, 22 December 2020). In particular, the guarantees of impartiality and objectivity are of the utmost importance in ensuring the fairness of a decision-making process in electoral matters (see *Podkolzina v. Latvia*, no. 46726/99, §§ 35-36, ECHR 2002-II).

(b) Application of those principles in the present case

49. It is not disputed that the removal of the applicant's name from the candidate list of her party, thus preventing her from standing for Parliament, amounted to an interference with her right under Article 3 of Protocol No. 1. Such interference will constitute a violation unless it meets the requirements of lawfulness, pursues a legitimate aim, and is proportionate to that aim (see, for example, *Tănase*, cited above, § 162, and *Kara-Murza v. Russia*, no. 2513/14, § 37, 4 October 2022).

(i) Lawfulness

50. The Court notes that the decision of the Central Electoral Commission of 21 August 2018, striking the applicant's name out of the list of candidates submitted by her party, was expressly based on two legal grounds: section 5(6) of the Parliamentary Elections Act, which declares ineligible for Parliament any person having "actively participated" in the CPL after 13 January 1991, and the Constitutional Court's judgment of 29 June 2018, narrowing down the scope of that clause by adding a second criterion of "endanger[ing] and still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law". The respondent Government contended that the Constitutional Court had merely exercised its binding interpretive power in a manner consistent with the Latvian constitutional system. Conversely, the applicant argued that, by adding this new criterion and shifting the focus of the impugned provision from the events of 1991 to the applicant's present-day activities, the Constitutional Court had interpreted that provision in a manner that was unforeseeable and prejudicial to her.

51. The Court refers to its well-established case-law to the effect that an impugned measure must have some basis in domestic law and also be compatible with the rule of law, a principle which is expressly mentioned in the Preamble to the Convention and is inherent in all of its articles. The expressions "lawfulness" or "prescribed by law", within the meaning of the Convention and the Court's case-law, also refer to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects. Foreseeability means that the legal provision in question must be formulated with sufficient precision to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention. However, the required scope of foreseeability depends to a considerable degree on the content of the instrument in question, the field it is designed to cover, and the number and status of those to whom it is addressed. Foreseeability does not mean absolute certainty; while certainty is highly desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Nor does the mere fact

that a legal provision is capable of more than one construction mean that it fails to meet the requirement of "foreseeability". The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice. Generally speaking, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, and the Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, among many other authorities, *Selahattin Demirtaş (no. 2)*, cited above, §§ 249-54).

52. In the present case, the Court observes that the wording of section 5(6) of the Parliamentary Elections Act is sufficiently clear in that it prevents from standing for Parliament "persons who actively participated after 13 January 1991 in the CPSU (CPL)". The applicant has never contended that this wording was not applicable to her or that there were any doubts in this respect (see *Ždanoka*, cited above, § 116). It is true that, in its judgment of 29 June 2018, the Constitutional Court interpreted the impugned provision in a restrictive way, introducing an additional criterion of "endanger[ing] and still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law". The Court notes that, as a result of this interpretation, the personal scope of the restriction was not broadened but narrowed down, potentially excluding some persons to whom it would otherwise apply. With regard to the applicant, however, it appears that, even if the Constitutional Court's judgment had not done so, she would still be ineligible for Parliament by virtue of the clearly worded provision of section 5(6). In these circumstances, the Court is satisfied that the impugned restriction was sufficiently foreseeable and therefore lawful (see, *mutatis mutandis*, *Tănase*, cited above, § 163). As to the consequences and implications of the additional criterion defined by the Latvian Constitutional Court, this Court will consider them in its examination of the proportionality of the measure below.

(ii) Legitimate aim

53. In the case of *Ždanoka*, cited above, the Grand Chamber found that the impugned restriction "pursued aims compatible with the principle of the rule of law and the general objectives of the Convention, namely the protection of the State's independence, democratic order and national security" (ibid., § 118). The Court sees no reason to find otherwise in the present case.

(iii) Proportionality

54. It remains to be determined whether the measure in question is proportionate to the legitimate aims mentioned above. In this regard the Court considers it useful to start by summarising the crucial points of the Grand

Chamber judgment of 16 March 2006 in the applicant's previous case (see *Ždanoka*, cited above):

(a) The main purpose of the impugned restriction was not to punish the persons concerned, but rather to protect the integrity of the democratic process by excluding from the work of a democratic legislative body those who had played an active and leading role in an organisation directly involved in the attempted violent overthrow of the newly restored democratic regime. While such a restriction could hardly be accepted in the context of a democratic political system that had existed for decades or even centuries, it could nevertheless be considered acceptable in Latvia, given the threat posed to the new democratic order by the resurgence of ideas that risked leading to the restoration of a totalitarian regime if allowed to gain ground. Under these conditions, it did not matter whether the CPL should be considered legal or illegal after 13 January 1991 (ibid., §§ 122, 130 and 133).

(b) The present or recent conduct of the applicant was irrelevant, given that the impugned measure was linked solely to her political positions during the crucial period of the struggle to maintain independence (ibid., § 132).

(c) In circumstances such as those in this case, the acts of a party could reasonably be attributed to its members, particularly its leaders, unless they distanced themselves from them. Therefore, the legislature could reasonably assume that the main leaders of the CPL had an anti-democratic position, unless they had rebutted this presumption by concrete actions. However, the applicant had made no statement indicating that she was distancing herself from the Communist Party during the crucial events of 1991, or later (ibid., § 123).

(d) Article 3 of Protocol No. 1 does not preclude the legislature from clearly and precisely defining the scope and manner of application of a restriction measure, the ordinary courts having only the task of verifying whether a particular person falls within the class or group covered by the legislative measure in question. In such a case, the Court's task is essentially to assess whether, in the light of this provision, the measure adopted by Parliament is proportionate, and not to find it faulty solely on the ground that the domestic courts did not have the power to "fully individualise" its application in the light of the particular situation and circumstances of the individual concerned. In that case, Ms Ždanoka had benefited from adversarial proceedings devoid of any appearance of arbitrariness by which the domestic courts had established that she fell within the disputed category defined by law. Moreover, in this type of procedure, the persons concerned might not benefit from the same guarantees as those offered by a criminal trial; thus, doubts might be interpreted against them, the burden of proof might be shifted onto them, and appearances might seem to matter. However, this was exactly the case of Ms Ždanoka, who had failed to refute the probative nature of the appearances weighing against her (ibid., §§ 124-128).

55. The Court notes at the outset that it does not operate in a vacuum. When assessing the compliance of State authorities with their obligations under the Convention and its Protocols and, in particular, when scrutinising the proportionality of an interference, it must have regard to the general context of the case at both the domestic and the international or regional levels (see, *mutatis mutandis*, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 162, 27 November 2023; *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 120, 17 March 2016; and *Gapoņenko v. Latvia* (dec.), no. 30237/18, § 43, 23 May 2023). As the Government have pointed out in their observations (see paragraph 40 above), the overall situation in Europe has changed significantly since 2006, when the Grand Chamber delivered its judgment in the applicant's previous case. In this regard, the Court cannot overlook the fact that Latvia is a neighbouring country of the Russian Federation which, starting from 2008, invaded parts of Georgia (see *Georgia v. Russia* (II) [GC], no. 38263/08, §§ 36-39, 21 January 2021) and acquired military and political control over parts of Ukraine (see *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, §§ 315-49, 16 December 2020, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, §§ 690-97, 30 November 2022, as well as *Gapoņenko*, cited above, *loc.cit.*). Lastly, the Court cannot ignore the fact that on 24 February 2022 Russia launched a military invasion of Ukraine, following which, as a result of a procedure initiated under Article 8 of the Statute of the Council of Europe, the Russian Federation ceased to be a member State as from 16 March 2022 (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 12, 17 January 2023). Even if this attack occurred after the present application had been lodged and communicated to the respondent Government, it is nevertheless an integral part of a clearly discernible trend of events subsequent to 2006 which is of relevance for the purposes of the present case.

56. It is in the light of the developments described above that the Court must assess the current compliance of the Latvian legislature with the necessity for periodic reassessment of the impugned restriction, as set out in § 135 of the *Ždanoka* judgment (see paragraph 10 above). It notes that the Latvian Parliament discussed and rejected proposals to repeal that measure on three occasions between 2007 and 2010, and that there were subsequently no further attempts at abolishing it (see paragraph 13 above). While in other circumstances the Court might consider this limited action as unjustified and capable of tipping the balance in favour of finding a violation, it cannot reach such a conclusion in the specific and sensitive context of the present case, given that the "greater stability" enjoyed by Latvia (and Europe in general), and referred to by the Grand Chamber in 2006, no longer exists. The Court also takes note of the fact that the Constitutional Court, having regard to the time that had elapsed and the changed situation, undertook a fresh examination of the impugned restriction (see paragraph 16 above). In sum,

the Grand Chamber had already acknowledged that the impugned restriction had to be assessed "with due regard to this very special historico-political context and the resultant wide margin of appreciation enjoyed by the State" (see *Ždanoka,* cited above, § 121). The Court cannot but acknowledge that in the period following the Grand Chamber judgment Latvia increasingly had legitimate reasons to fear for its security, territorial integrity, and democratic order, and that this calls for an even wider margin of appreciation in protecting those values.

57. As the Court already emphasised in *Tănase*, cited above, while a member of Parliament cannot be required to be "loyal" to the government in place and to its policies, the need to ensure their loyalty to the State in principle encompasses respect for the country's Constitution, laws, institutions, independence, and territorial integrity, preventing any changes effected in violation of the laws of the State (ibid., §§ 166-67). In another context, the Court has emphasised that a political party or its leaders may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles (see *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, § 79, ECHR 2009). Turning to the legal provision applied to the applicant, that is, section 5(6) of the Parliamentary Elections Act as interpreted by the Constitutional Court's judgment of 29 June 2018, the Court notes that it bars from standing for parliamentary elections any citizen who both "actively participated" in the CPL after 13 January 1991 and is currently "endanger[ing] and still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law" (see paragraph 50 above).

58. In accordance with the principle of subsidiarity, it is not for the Court to take the place of the national authorities in interpreting domestic law (see, among many other authorities, *Mugemangango*, cited above, § 71). In particular, it is not its task to take the place of a constitutional court and to interpret the national Constitution (see, *mutatis mutandis*, *Apostol v. Georgia*, no. 40765/02, § 39, ECHR 2006-XIV). The Court finds no reason to disagree with the respondent Government's assertion that the binding interpretation given by the Constitutional Court was within the latter's interpretive authority in the Latvian constitutional system (see paragraph 37 above). Given the wide margin of appreciation enjoyed by the respondent State in this area, the Court does not consider it arbitrary or unreasonable to have chosen the two cumulative criteria set out above (see paragraphs 52 and 57 above) as identifying a particularly high level of civic disloyalty and threat to the protected values.

59. Furthermore, the approach of the Latvian State in this regard appears to be consistent, in that persons targeted by section 5(6) of the Parliamentary

Elections Act also face similar restrictions in other vital and sensitive areas. Thus, they may not stand as candidates for local government councils, be elected as Head of State, be appointed as members of the Cabinet of Ministers, work at State security institutions and, if they do not have Latvian nationality, obtain it by way of naturalisation (see paragraph 27 above).

60. Contrary to what the applicant seems to assert (see paragraph 35 above), the Court does not find that she was excluded from elections because of a mere disagreement with the government currently in power over their policies in this or that area, given that her right to voice such disagreement by any legal means has never been called into question (see, *mutatis mutandis*, *Petropavlovskis v. Latvia*, no. 44230/06, § 88, ECHR 2015). As the Constitutional Court has noted, the impugned restriction did not prohibit the individual concerned from being actively engaged in political parties and associations, and the applicant was elected as a member of the European Parliament from 2004 until 2024 (see paragraphs 11 and 16 above).

61. Lastly, as to the procedural aspect of the applicant's rights under Article 3 of Protocol No. 1, the Court reiterates that the initial logic of the impugned restriction, where the scope and conditions of ineligibility were determined in detail by the legislature, leaving the courts with the sole task of verifying whether a particular individual belonged to the category or group covered by the statutory measure at issue and without delegating them more extensive jurisdiction to make a full individualised assessment of each candidate's case, has been found *per se* compatible with that provision (see *Ždanoka*, cited above, § 125). Later, in 2018, the Constitutional Court narrowed down the restriction by adding a new criterion of "[having] endangered and still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law", developed an individualised assessment of each candidate's "dangerousness", and confirmed the powers of the Central Electoral Commission to carry out that assessment (see paragraph 16 above). In the present case, however, the applicant has not shown why and in what manner the reasoning of the Central Electoral Commission was arbitrary, *ultra vires*, or contrary to the law. It is true that the wording of the Central Electoral Commission's decision of 21 August 2018, which was itself based on the annual reports of the Security Police and on other information provided by State security agencies, might be seen as somewhat vague and lacking in specificity as to which of the applicant's activities are considered by the domestic authorities to endanger Latvia's independence and democratic order (paragraph 19 above). However, in the specific circumstances of the case and given the public profile of the applicant, including her support of the Russian Federation's actions in the Crimean Peninsula, the Court admits that the reasons given by the Commission are sufficient for the purposes of Article 3 of Protocol No. 1 (see and compare, *mutatis mutandis*, *Kirkorov v. Lithuania* (dec.), no. 12174/22, § 63, 19 March 2024, where the Court took note of the

relevant Council of Europe Parliamentary Assembly resolutions and found that the assessment of the domestic authorities was not arbitrary or without basis). Finally, the Court notes that the applicant was able to lodge an appeal with the Regional Administrative Court, which, in adversarial proceedings, found that the Commission had acted within its competence. With regard to the alleged procedural shortcomings in those proceedings, in particular the use of classified evidence, the Court notes that the Regional Administrative Court permitted the applicant's representative to consult a report document that had previously been confidential (see paragraphs 21-22 above). The applicant has failed to explain how exactly this or any other alleged shortcoming affected her rights and the outcome of the case. In sum, the Court is satisfied that those proceedings afforded the applicant sufficient procedural safeguards against arbitrariness.

(iv) Conclusion

62. Having regard to all the above, in particular, given that the general context of the case has changed and that the legal basis for the impugned restriction has been narrowed down by the Constitutional Court in 2018 and applied accordingly by the Central Electoral Commission (see paragraphs 52, 58 and 61 above) since the Grand Chamber's judgment in 2006, the Court is satisfied that, by disqualifying the applicant from standing for parliamentary election, the Latvian authorities did not overstep their margin of appreciation. It follows that there has been no violation of Article 3 of Protocol No. 1 in this case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. The applicant also complained that her disqualification from standing for election constituted a breach of Articles 10, 11, and 17 of the Convention. The Court considers that, in the circumstances of the case, Article 3 of Protocol No. 1 is the *lex specialis* in respect to Articles 10 and 11 of the Convention (see *Ždanoka*, cited above, § 141). The Court further reiterates that, in order for an issue to arise under Article 17 proper, the applicant's complaint must go beyond allegations of breaches of other provisions of the Convention and its Protocols, which is clearly not the case here (see *Maggio v. Italy* (dec.), nos. 46286/09 and 4 others, 8 June 2010). In these circumstances, no separate examination of the corresponding complaints is warranted.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the complaints under Articles 10, 11 and 17 of the Convention.

Done in English, and notified in writing on 25 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President