CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ŽDANOKA v. LATVIA

(Application no. 58278/00)

JUDGMENT

STRASBOURG

17 June 2004

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
16 March 2006

This judgment will become final in the conditions set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ždanoka v. Latvia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 58278/00) against the Republic of Latvia lodged with the Court on 20 January 2000 under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms Tatjana Ždanoka ("the applicant").

2. The applicant alleged, in particular, that her disqualification from standing for election to the Latvian Parliament and to municipal councils, imposed on account of her active participation within the Communist Party of Latvia after 13 January 1991, infringed her rights as guaranteed by Article 3 of Protocol No. 1 to the Convention and by Articles 10 and 11 of the Convention.

3. The application was assigned to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

On 1 November 2001 the Court changed the composition of its sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

4. By a decision of 6 March 2003 the Chamber declared the application partly admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1 of the Rules of Court). On 7 April 2003 the applicant submitted her claim for just satisfaction (Article 41 of the Convention). On 12 May 2003 the Government submitted their observations on that claim. On 24 July 2003 the applicant clarified and expanded her claim for just satisfaction. The Government replied on 4 September 2003.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 15 May 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms I. REINE, *Agent*,
Ms I. FREIMANE, *Adviser;*

(b) *for the applicant*
Mr W. BOWRING, barrister, *Counsel*.

The Court heard addresses by Mr Bowring and Ms Reine. Ms Ždanoka, the applicant, was also present at the hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The historical context and the background to the case

1. The Soviet period

7. In 1971 the applicant, who at the material time was a mathematics student at the University of Latvia, joined the Communist Party of Latvia (hereafter "the CPL"). This organisation was in reality a regional branch of the Communist Party of the Soviet Union (hereafter "the CPSU"), the USSR's single ruling party.

From 1972 to 1990 the applicant worked as a lecturer at the University of Latvia. Throughout this period she was a member of the CPL's university branch.

8. From 1988 onwards there was considerable social pressure in Latvia, as in several other countries of central and eastern Europe, for democratisation of political life and restoration of state independence, which in Latvia's case had been lost in 1940.

9. In March 1990 the applicant was elected to the Supreme Council (*Augstākā Padome*) of the "Soviet Socialist Republic of Latvia" (hereafter "the Latvian SSR") as a representative for the Pļavnieki constituency in Riga. She subsequently joined the CPL's local branch. In April 1990 this branch selected her to attend the CPL's 25th Congress, where she was

elected to the party's Central Committee for Supervision and Audit. According to copies of that Committee's minutes, the applicant was a member of a sub-committee responsible for supervising the implementation of decisions and activities arising from the CPL's programme.

10. At the same congress, a group of delegates expressed their disagreement with the CPL's general policy, which remained loyal to the Soviet Union and the CPSU, was opposed to any democratisation of public life and sought to maintain the status quo. These delegates publicly announced their withdrawal from the CPL and established a new party, the "Independent Communist Party", which immediately declared its support for Latvian independence and for a multi-party political system. The applicant did not join the dissident delegates and remained within the CPL.

2. Latvia's declaration of independence

11. On 4 May 1990 the Supreme Council adopted a Declaration on the Restoration of the Independence of the Republic of Latvia, which declared Latvia's incorporation into the USSR unlawful and void and restored legal force to the fundamental provisions of the Latvian Constitution (*Satversme*) of 1922. However, paragraph 5 of the Declaration introduced a transition period, aimed at a gradual restoration of genuine State sovereignty as each institutional tie with the USSR was severed. During that transition period, various provisions of the Constitution of the Latvian SSR would remain in force. A special governmental commission was given responsibility for negotiating with the Soviet Union on the basis of the Russo-Latvian Peace Treaty of 11 August 1920.

The above-mentioned Declaration was adopted by 139 out of a total of 201 Supreme Council members, with one abstention. 57 members of the "*Līdztiesība"* parliamentary bloc ("Equal Rights", in reality the CPL group), including the applicant, did not vote. On the same day, 4 May 1990, the Central Committee of the CPL adopted a resolution strongly criticising the Declaration and calling on the President of the Soviet Union to intervene.

12. On 7 May 1990 the Supreme Council selected the government of the Independent Republic of Latvia.

3. The events of January and March 1991

13. The parties dispute the events of January and March 1991. According to the Government, on 12 January 1991 the Soviet army launched military operations against the government of independent Lithuania, which had been formed in the same way as the Latvian government. Several persons were killed in the course of those events. Against this background, an attempted coup was also launched in Latvia. On 13 January 1991 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 Committee of Public Safety (*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 several lives during armed confrontations in Riga, this attempted coup failed.

14. The applicant contested the version of events put forward by the Government. In her opinion, the Soviet army's aggression against the Lithuanian government and people was not a proven fact; in this connection, she submitted a copy of a Russian newspaper article which claimed that it had been the Lithuanian independence supporters themselves, rather than Soviet soldiers, who fired into the crowd, with the aim of discrediting the Soviet army. The applicant also claimed that, at the material time, a series of public demonstrations had been held in Latvia to protest against the increase in food prices ordered by the government; those demonstrations were thus the main reason for the events of January 1991. Finally, the applicant argued that, in their respective statements of 13 and 15 January 1991, the Plenum of the CPL's Central Committee and the Committee of Public Safety had not only called for or announced the removal of the Latvian authorities, but had also stated that early elections would be held for the Supreme Council.

15. On 3 March 1991 a national vote was held on Latvian territory. According to the Government, this was a genuine national referendum; the applicant argues that it was a simple consultative vote. Electors had to reply to a question worded as follows: "*Do you support a democratic and politically independent Republic of Latvia?*" According to figures supplied by the Government, 87.5 % of all residents registered on the electoral roll voted: 73.6 % of them responded in the affirmative to the question posed. The applicant contests the above-mentioned turnout rate and thus the very legitimacy of the plebiscite.

4. The events of August and September 1991

16. On 19 August 1991 there was an attempted coup in Moscow. The self-proclaimed "National State of Emergency Committee" declared that Mr Gorbachev, President of the USSR, was suspended from his duties, declared itself the sole ruling authority and imposed a state of emergency "in certain regions of the USSR".

17. On the same day, 19 August 1991, the Central Committee and the Riga Committee of the CPL declared their support for the National State of Emergency Committee and set up an "operational group" to provide assistance to it. According to the Government, on 20 August 1991 the CPL, the "*Līdztiesība*" parliamentary bloc and various other organisations signed and disseminated an appeal called "*Godājamie Latvijas iedzīvotāji!*" ("Honourable residents of Latvia!"), urging the population to comply with

the requirements of the state of emergency and not to oppose the measures imposed by the National State of Emergency Committee in Moscow. According to the applicant, the CPL's participation in all those events has not been proved; in particular, the members of the "*Līdztiesība*" bloc were taking part in parliamentary debates over two consecutive days and were not even aware that such an appeal was to be issued.

18. This coup also ended in failure. On 21 August 1991, the Latvian Supreme Council enacted a constitutional law on the state status of the Republic of Latvia and proclaimed the country's immediate and absolute independence. Paragraph 5 of the Declaration of 4 May 1990, concerning the transition period, was repealed.

19. By a decision of 23 August 1991 the Supreme Council declared the CPL unconstitutional. The following day, the party's activities were suspended and the Minister of Justice was instructed "to investigate the unlawful activities of the CPL and to put forward ... a motion on the possibility of authorising its continued operations". On the basis of the Minister of Justice's proposal, the Supreme Council ordered the party's dissolution on 10 September 1991.

20. In the meantime, on 22 August 1991, the Supreme Council set up a parliamentary committee to investigate the involvement of members of the "*Līdztiesība*" bloc in the coup. On the basis of that committee's final report, the Supreme Council revoked fifteen members' right to sit in parliament on 9 July 1992; the applicant was not one of those concerned.

E. Subsequent developments

21. In February 1993 the applicant became chairperson of the "Movement for Social Justice and Equal Rights in Latvia" ("*Kustība par sociālo taisnīgumu un līdztiesību Latvijā*"), which later became a political party, "*Līdztiesība*" ("Equal rights").

22. On 5 and 6 June 1993 parliamentary elections were held in accordance with the restored Constitution of 1922. For the first time since Latvian independence had been regained, the population elected the Parliament (*Saeima*), which took over from the Supreme Council. It was at that point that the applicant's term of office as a member of parliament expired. As a result of the Latvian authorities' refusal to include her on the residents' register as a Latvian citizen, she was unable to take part in those elections, in the following parliamentary elections, held in 1995, or in the municipal elections of 1994. Following an appeal lodged by the applicant, the courts recognised her Latvian nationality in January 1996, instructing the authorities to register her as such and to supply her with the appropriate documents.

B. The 1997 municipal elections

23. On 25 January 1997 the "Movement for Social Justice and Equal Rights in Latvia" submitted to the Riga Electoral Commission a list of ten candidates for the forthcoming municipal elections of 9 March 1997. The applicant was one of those candidates. In line with the requirements of the Municipal Elections Act, she signed the list and attached a written statement confirming that she was not one of the persons referred to in section 9 of that Act. Under the terms of the Act, individuals who had "actively participated" (*darbojušās*) in the CPSU, the CPL and several other named organisations after 13 January 1991 were not entitled to stand for office.

In a letter sent on the same day, 25 January 1997, the applicant informed the Electoral Commission that she had been a member of the CPL's Pļavnieki branch and of its Central Committee for Supervision and Audit until 10 September 1991, date of the CPL's official dissolution. However, she argued that the restrictions mentioned above were not applicable to her, since they were contrary to Articles 2 and 25 of the International Covenant on Civil and Political Rights.

24. By a decision of 11 February 1997 the Riga Electoral Commission registered the list submitted by the applicant. At the elections of 9 March 1997 this list obtained four of the sixty seats on Riga City Council (*Rīgas Dome*). The applicant was one of those elected.

C. The 1998 parliamentary elections

25. With a view to participating in the parliamentary elections of 3 October 1998, the "Movement for Social Justice and Equal Rights in Latvia" formed a coalition with the Party of National Harmony (*Tautas Saskaņas partija*), the Latvian Socialist Party (*Latvijas Sociālistiskā partija*) and the Russian Party (*Krievu partija*). The four parties formed a united list entitled "Party of National Harmony". The applicant appeared on this list as a candidate for the constituencies of Riga and Vidzeme.

On 28 July 1998 the list was submitted to the Central Electoral Commission for registration. In accordance with the requirements of the Parliamentary Elections Act, the applicant signed and attached to the list a written statement identical to the one she had submitted prior to the municipal elections. As she had done for the 1997 elections, she likewise sent a letter to the Central Electoral Commission explaining her situation and arguing that the restrictions in question were incompatible with the International Covenant on Civil and Political Rights and with Article 3 of Protocol No. 1 to the Convention.

26. On 29 July 1998 the Central Electoral Commission suspended registration of the list on the ground that the applicant's candidacy did not meet the requirements of the Parliamentary Elections Act. Not wishing to

jeopardise the entire list's prospects of being registered, the applicant withdrew her candidacy, after which the list was immediately registered.

D. The procedure for determining the applicant's participation in the CPL

27. By a letter of 7 August 1998 the President of the Central Electoral Commission asked the State Procurator General to examine the legitimacy of the applicant's election to the Riga City Council.

28. By a decision of 31 August 1998, a copy of which was sent to the Central Electoral Commission, the Procurator General's Office (*Ģenerālprokuratūra*) noted that the applicant had not committed any action defined as an offence in the Criminal Code. The decision stated that, although the applicant had provided false information to the Riga Electoral Commission regarding her participation in the CPL, there was nothing to prove that she had done so with the specific objective of misleading the Commission. In that connection, the Procurator's Office considered that the statement by the applicant, appended to the list of candidates for the elections of 9 March 1997, was to be read in conjunction with her explanatory letter of 25 January 1997.

On 14 January 1999 the General Procurator's Office applied to the Riga Regional Court for a finding that the applicant had participated in the CPL after 13 January 1991. The Procurator's Office attached the following documents to its submission: the applicant's letter of 25 January 1997; the minutes of the meeting of 26 January 1991 of the CPL's Central Committee for Supervision and Audit; the minutes of the joint meeting of 27 March 1991 of the Central Committee for Supervision and Audit and the municipal and regional committees for supervision and audit; the appendices to those minutes, indicating the structure and composition of the said committee and a list of the members of the Audit Committee at 1 July 1991.

29. Following adversarial proceedings, the Riga Regional Court allowed the request by the Procurator's Office in a judgment of 15 February 1999. It considered that the submitted documents clearly attested to the applicant's participation in the party's activities after the critical date, and that the evidence provided by the applicant was insufficient to refute this finding. Consequently, the court dismissed the applicant's arguments to the effect that she was only formally a member of the CPL and that she did not participate in the meetings of its Central Committee for Supervision and Audit, and that accordingly she could not be held to have "acted", "been a militant" or "actively participated" (*darboties*) in the party's activities.

30. The applicant appealed against this judgment to the Civil Division of the Supreme Court. On 12 November 1999 the Civil Division began examining the appeal. At the oral hearing, the applicant submitted that the content of the above-mentioned minutes of 26 January and 27 March 1991,

referring to her by name, could not be held against her since on both those dates she had been carrying out her duties in the Latvian Supreme Council and not in the CPL. After hearing evidence from two witnesses who stated that the applicant had indeed been present at the Supreme Council, the Division suspended examination of the case in order to enable the applicant to submit more cogent evidence in support of her statements, such as a record of parliamentary debates or minutes of the "*Līdztiesība*" parliamentary bloc's meetings. However, as the above-mentioned minutes had not been preserved by the Parliamentary Record Office, the applicant was never able to produce such evidence.

By a judgment of 15 December 1999 the Civil Division dismissed the applicant's appeal. It stated that the evidence gathered by the Procurator's Office was sufficient to conclude that the applicant had taken part in the CPL's activities after 13 January 1991. The Division further noted that the CPL's dissolution had been ordered "in accordance with the interests of the Latvian State in a specific historical and political situation" and that the international conventions relied on by the applicant allowed for justified limitations on the exercise of electoral rights.

31. Following the Civil Division's judgment, enforceable from the date of its delivery, the applicant was disqualified from electoral office and lost her seat as a member of Riga City Council.

32. The applicant applied to the Senate of the Supreme Court to have the Civil Division's judgment quashed. She stressed, *inter alia*, the disputed restriction's incompatibility with Article 11 of the Convention. By a final order of 7 February 2000 the Senate declared the appeal inadmissible. In the Senate's opinion, the proceedings in question were limited to a single strictly-defined objective, namely a finding as to whether or not the applicant had taken part in the CPL's activities after 13 January 1991. The Senate concluded that it did not have jurisdiction to analyse the legal consequences of this finding, on the ground that this was irrelevant to the finding itself. In addition, the Senate noted that any such analysis would involve an examination of the Latvian legislation's compatibility with constitutional and international law, which did not come within the final appeal court's jurisdiction.

E. The 2002 parliamentary elections

33. The next parliamentary elections took place on 5 October 2002. With a view to taking part in those elections, the "*Līdztiesība*" party, chaired by the applicant, formed an alliance entitled "For Human Rights in a United Latvia" ("*Par cilvēka tiesībām vienotā Latvijā*", abbreviated to *PCTVL*) with two other parties, the Party of National Harmony and the Socialist Party. The alliance's electoral manifesto expressly referred to the need to

abolish the restrictions on the electoral rights of persons who had been actively involved in the CPL after 13 January 1991.

34. In spring 2002 the Executive Council of the "*Līdztiesība*" party put forward the applicant as a candidate in the 2002 elections; the Council of the *PCTVL* alliance approved this nomination. Shortly afterwards, however, on 16 May 2002, the outgoing Parliament dismissed a motion to repeal section 5(6) of the Parliamentary Elections Act (see paragraph 47 below). The alliance's council, which was fully aware of the applicant's situation and feared that her candidacy would prevent registration of the *PCTVL*'s entire list, changed its opinion and decided not to include her name on the list of candidates. The applicant then decided to submit a separate list containing only one name, her own, entitled "Party of National Harmony".

35. On 23 July 2002 the *PCTVL* electoral alliance submitted its list to the Central Electoral Commission. In all, it contained the names of 77 candidates for Latvia's five constituencies. On the same date the applicant asked the Commission to register her own list, for the constituency of Kurzeme alone. As she had done for the 1998 elections, she attached to her list a written statement to the effect that the disputed restrictions were incompatible with the Constitution and with Latvia's international undertakings. On 25 July 2002 the Commission registered both lists.

36. By a decision of 7 August 2002 the Central Electoral Commission, referring to the Civil Division's judgment of 15 December 1999, removed the applicant from its list. In addition, having noted that the applicant had been the only candidate on the "Party of National Harmony" list and that, following her removal, there were no other names, the Commission decided to cancel the registration of that list.

37. At the elections of 5 October 2002 the *PCTVL* alliance's list obtained 18.94 % of the vote and won twenty-five seats in Parliament.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions regarding Latvia's state status

38. The operative provisions of the Declaration of 4 May 1990 on the Restoration of the Independence of the Republic of Latvia read as follows:

> "The Supreme Council of the Latvian SSR *decides*:
>
> (1) in recognition of the supremacy of international law over the provisions of national law, to consider illegal the Pact of 23 August 1939 between the USSR and Germany and the subsequent liquidation of the sovereignty of the Republic of Latvia through the USSR's military aggression on 17 June 1940;

(2) to declare null and void the Declaration by the Parliament [*Saeima*] of Latvia, adopted on 21 July 1940, on Latvia's integration into the Union of Soviet Socialist Republics;

(3) to restore the legal effect of the Constitution [*Satversme*] of the Republic of Latvia, adopted on 15 February 1922 by the Constituent Assembly [*Satversmes sapulce*], throughout the entire territory of Latvia. The official name of the Latvian state shall be the REPUBLIC of LATVIA, abbreviated to LATVIA;

(4) to suspend the Constitution of the Republic of Latvia pending the adoption of a new version of the Constitution, with the exception of those articles which define the constitutional and legal foundation of the Latvian State and which, in accordance with Article 77 of the same Constitution, may only be amended by referendum, namely:

Article 1– Latvia is an independent and democratic republic.

Article 2 – The sovereign power of the State of Latvia is vested in the Latvian people.

Article 3 – The territory of the State of Latvia, as established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale.

Article 6 – The Parliament (*Saeima*) shall be elected in general, equal, direct and secret elections, based on proportional representation.

Article 6 of the Constitution shall be applied after the restoration of the state and administrative structures of the independent Republic of Latvia, which will guarantee free elections;

(5) to introduce a transition period for the re-establishment of the Republic of Latvia's *de facto* sovereignty, which will end with the convening of the Parliament of the Republic of Latvia. During the transition period, supreme power shall be exercised by the Supreme Council of the Republic of Latvia;

(6) during the transition period, to accept the application of those constitutional and other legal provisions of the Latvian SSR which are in force in the territory of the Latvian SSR when the present Declaration is adopted, in so far as those provisions do not contradict Articles 1, 2, 3 and 6 of the Constitution of the Republic of Latvia.

Disputes on matters relating to the application of legislative texts will be referred to the Constitutional Court of the Republic of Latvia.

During the transition period, only the Supreme Council of the Republic of Latvia shall adopt new legislation or amend existing legislation;

(7) to set up a commission to draft a new version of the Constitution of the Republic of Latvia that will correspond to the current political, economic and social situation in Latvia;

(8) to guarantee social, economic and cultural rights, as well as universally recognised political freedoms compatible with international instruments of human rights, to citizens of the Republic of Latvia and citizens of other States permanently

residing in Latvia. This shall apply to citizens of the USSR who wish to live in Latvia without acquiring Latvian nationality;

(9) to base relations between the Republic of Latvia and the USSR on the Peace Treaty of 11 August 1920 between Latvia and Russia, which is still in force and which recognises the independence of the Latvian State for all time. A governmental commission shall be set up to conduct the negotiations with the USSR."

39. The operative provisions of the Constitutional Law of 21 August 1991 on the State Status of the Republic of Latvia (*Konstitucionālais likums* "*Par Latvijas Republikas valstisko statusu*") state:

"The Supreme Council of the Republic of Latvia *decides*:

(1) to declare that Latvia is an independent and democratic republic in which the sovereign power of the State of Latvia belongs to the Latvian people, the state status of which is defined by the Constitution of 15 February 1922;

(2) to repeal paragraph 5 of the Declaration of 4 May 1990 on the Restoration of the Independence of the Republic of Latvia, establishing a transition period for the *de facto* restoration of the Republic of Latvia's state sovereignty;

(3) until such time as the occupation and annexation is ended and Parliament is convened, supreme state power in the Republic of Latvia shall be fully exercised by the Supreme Council of the Republic of Latvia. Only those laws and decrees enacted by the supreme governing and administrative authorities of the Republic of Latvia shall be in force in its territory;

(4) this constitutional law shall enter into force on the date of its enactment."

B. The status of the CPSU and the CPL

40. The role of the CPSU in the former Soviet Union was defined in Article 6 of the Constitution of the USSR (1977) and in Article 6 of the Constitution of the Latvian SSR (1978), which were worded along identical lines. Those provisions stated:

"The leading and guiding force of Soviet society and the nucleus of its political system and of all state organizations and public organisations is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people.

The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of the USSR's domestic and foreign policy, directs the great constructive work of the Soviet people, and imparts a planned, systematic and theoretically-substantiated character to their struggle for the victory of communism.

All party organisations shall function within the framework of the Constitution of the USSR."

41. The Supreme Council's decision of 24 August 1991 on the suspension of the activities of certain non-governmental and political organisations was worded as follows:

> "On 20 August 1991 the Internationalist Front of Workers of the Latvian SSR, the United Council of Labour Collectives, the Republican Council of War and Labour Veterans, the Central Committee of the Communist Party of Latvia and the Central Committee of the Latvian Union of Communist Youth issued a proclamation informing the Republic's population that a state of emergency had been decreed in Latvia and encouraging all private individuals to oppose those who did not submit to the orders of the National State of Emergency Committee. In so doing, the above-mentioned organisations ... declared their support for the organisers of the coup d'état and encouraged other individuals to do the same.
>
> The actions of those organisations are contrary to Articles 4, 6 and 49 of the Latvian Constitution, which state that Latvian citizens are entitled to form parties and other associations only if their objectives and practical activities are not aimed at the violent transformation or overturn of the existing constitutional order... and that associations must observe the Constitution and legislation and act in accordance with their provisions.
>
> The Supreme Council of the Republic of Latvia decrees:
>
> 1. The activities of the Communist Party of Latvia [and of the other above-mentioned organisations] are hereby suspended..."

42. The relevant parts of the Supreme Council's decision of 10 September 1991 on the dissolution of the above-mentioned organisations read as follows:

> "... In May 1990 the Communist Party of Latvia, the Internationalist Front of Workers of the Latvian SSR, the United Council of Labour Collectives and the Republican Council of War and Labour Veterans set up the Committee for the Defence of the Constitution of the USSR and the Latvian SSR and the Rights of Citizens, which was renamed the Latvian Committee of Public Safety on 25 November 1990...
>
> On 15 January 1991 the Latvian Committee of Public Safety declared that it was seizing power and dissolving the Supreme Council and the Government of the Republic of Latvia.
>
> In August 1991 the Central Committee of the Communist Party of Latvia [and the other above-mentioned organisations] supported the coup...
>
> Having regard to the preceding, the Supreme Council of the Republic of Latvia decrees:
>
> 1. The Communist Party of Latvia [and the other above-mentioned organisations], together with the coalition of these organisations, the Latvian Committee of Public Safety, are hereby dissolved on the ground that they have acted against the Constitution;...

2. Former members of the Communist Party of Latvia [and of the other above-mentioned organisations] are informed that they are entitled to associate within parties and other associations whose objectives and practical activities are not aimed at the violent transformation or overthrow of the existing constitutional order, and which are not otherwise contrary to the Constitution and the laws of the Republic of Latvia ..."

C. The electoral legislation

1. Substantive provisions

43. 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 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 64

Legislative power lies with the Parliament [*Saeima*] and with the people, in the conditions and to the extent provided for by this Constitution.

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..."

44. The relevant provisions of the Parliamentary Elections Act (*Saeimas vēlēšanu likums*) of 25 May 1995 provide:

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 law.

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 Committee of Public Safety, or in their regional committees; ...

section 11

The following documents must be appended to the list of candidates: ...

(3) a signed declaration by each candidate on the list confirming that he or she meets the requirements of section 4 of this Act and that he or she is not concerned by section 5(1) – (6) of the present Act; ...

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 candidate is not a citizen enjoying full civic rights (sections 4 and 5 above); ...

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 Committee of Public Safety, or in their regional committees, shall be attested by a judgment of the relevant court; ..."

45. The Law of 13 January 1994 on elections to municipal councils and city councils (*Pilsētas domes un pagasta padomes vēlēšanu likums*) contains similar provisions to the provisions of the Parliamentary Elections Act cited above. In particular, section 9(5) is identical to section 5(6) of that Act.

2. Procedural provisions

46. The procedure for obtaining a judicial statement attesting to an individual's participation or non-participation in the above-mentioned organisations is governed by Chapter 23-A of the Code of Civil Procedure (*Civilprocesa kodekss*), which was inserted by a Law of 3 September 1998 and is entitled "Examination of cases concerning the attestation of restrictions on electoral rights". The provisions of that chapter read as follows:

Article 233-1

"A request for a statement of restriction on electoral rights may be submitted by the prosecutor...

The request must be submitted to the court in whose territorial jurisdiction is situated the home of the person in respect of whom the attestation of a restriction on electoral rights is requested.

The request may be submitted where an electoral commission has registered a list of candidates which includes ... a citizen in respect of whom there is evidence that, subsequent to 13 January 1991, he or she actively participated in the CPSU (in the CPL).... A request concerning a person included in the list of candidates may also be submitted once the elections have already taken place.

The request must be accompanied by a statement from the electoral commission confirming that the person in question has stood as a candidate in elections and that the list in question has been registered, as well as by evidence confirming the allegations made in the request."

Article 233-3

After examining the request, the court shall give its judgment:

(1) finding that, after 13 January 1991, the person concerned did actively participate in the CPSU (in the CPL) ...;

(2) declaring the request ill-founded and dismissing it ..."

D. Proposals to repeal the disputed restrictions

47. The Parliamentary Elections Act was enacted on 25 May 1995 by the first Parliament elected after the restoration of Latvia's independence, otherwise known as the "Fifth Legislature" (the first four legislatures having operated between 1922 and 1934). The following legislature (the Sixth), elected in October 1995, examined three different proposals seeking to repeal section 5(6) of the above-mentioned Act. At the plenary session of 9 October 1997, the three proposals were rejected by large majorities after lengthy debates. Likewise, on 18 December 1997, during a debate on a proposal to restrict section 5(6), the provision's current wording was confirmed. Elected in October 1998, the following legislature (the Seventh) examined a proposal to repeal section 5(6) at a plenary session on 16 May 2002. After lengthy discussions, the majority of members of parliament refused to accept the proposal.

Finally, the Eighth Legislature, elected in October 2002, examined a similar proposal on 15 January 2004. It was also rejected.

F. The Constitutional Court's judgment of 30 August 2000

48. In a judgment of 30 August 2000 in case no. 2000-03-01, the Constitutional Court (*Satversmes tiesa*) found that the restrictions imposed by section 5(6) of the Parliamentary Elections Act and section 9(5) of the

Municipal Elections Act were compatible with the Latvian Constitution and with Article 14 of the Convention, taken in conjunction with Article 3 of Protocol No. 1.

In that judgment, adopted by four votes to three, the Constitutional Court first reiterated the general principles laid down in the settled case-law of the Convention institutions in applying Article 14 of the Convention and Article 3 of Protocol No. 1. It further held:

> "... 4. The argument that the provisions complained of, forbidding certain Latvian citizens from standing as candidates or being elected to Parliament and municipal councils, discriminate against them on the basis of their political allegiance, is without foundation.... The impugned provisions do not provide for a difference in treatment on the basis of an individual's political convictions (opinions) but for a restriction on electoral rights for having acted against the re-established democratic order after 13 January 1991...
>
> Accordingly, Parliament limited the restrictions to the degree of each individual's personal responsibility [*individuālās atbildības pakāpe*] in carrying out those organisations' objectives and programmes, and the restriction on the right to be elected to Parliament or to a municipal council ... is related to the specific individual's activities in the respective ... associations.
>
> In itself, formal membership of the above-mentioned organisations cannot serve as a basis for preventing an individual from standing as candidate or being elected to Parliament....
>
> Consequently, the impugned provisions are directed only against those who attempted, subsequent to 13 January 1991 and in the presence of the army of occupation, to re-establish the former regime through active participation [*ar aktīvu darbību*]; on the other hand, they do not affect persons who have differing political convictions (opinions). The tendency of certain courts to concentrate solely on the finding of the fact of formal membership and not to evaluate the person's behaviour is inconsistent with the objectives sought by Parliament in enacting the provision in issue...
>
> 6. ...Given that those organisations' objectives were linked to the overthrow of the existing state regime [*pastāvošās valsts iekārtas graušana*], they were essentially unconstitutional...
>
> Consequently, the aim of the restrictions on passive electoral rights is to protect the democratic state order, national security and territorial integrity of Latvia. The impugned provisions are not directed against pluralism of ideas in Latvia or against a person's political opinions, but against those who, through their active participation, have attempted to overthrow the democratic state order.... The exercise of human rights may not be directed against democracy as such...
>
> The substance and effectiveness of law is demonstrated in its ethical nature [*ētiskums*]. A democratic society has a legitimate interest in requiring loyalty to democracy from its political representatives. In establishing restrictions, the candidates' honour and reputation is not challenged, in the sense of personal legal protection [*personisks tiesisks labums*]; what is challenged is the worthiness of the persons in question to represent the people in Parliament or in the relevant municipal

council. These restrictions concern persons who were permanent agents of the occupying power's repressive regime, or who, after 13 January 1991, participated in the organisations mentioned in the impugned provisions and actively fought against the re-established Latvian Constitution and State...

The argument ... that democratic state order must be protected against individuals who are not ethically qualified to become representatives of a democratic state at political or administrative level ... is well-founded...

...The removal from the list of a candidate who was involved in the above-mentioned organisations is not an arbitrary administrative decision; it is based on an individual judgment by a court. In accordance with the law, evaluation of individual responsibility comes under the jurisdiction of the courts....

7. ...In order to determine whether the measure applied, namely the restrictions on passive electoral rights, is proportionate to the objectives being pursued, namely the protection, firstly, of democratic state order and, secondly, of the national security and integrity of the Latvian State, it is necessary to assess the political situation in the country and other related circumstances. Parliament having evaluated the historical and political circumstances of the development of democracy on several occasions ... the Court does not consider that at this stage there would be grounds for challenging the proportionality between the measure applied and its aim.

However, Parliament, by periodically examining the political situation in the State and the necessity and merits of the restrictions, should decide to establish a time-limit on these restrictions ... since such limitations on passive electoral rights may exist only for a specific period."

49. Three of the Constitutional Court's seven judges who examined the above-mentioned case issued a dissenting opinion in which they expressed their disagreement with the majority's conclusions. Referring, *inter alia*, to the judgments in *Vogt v. Germany* of 26 September 1995 (Series A no. 323) and *Rekvényi v. Hungary* (GC, no. 25390/94, ECHR 1999-III), they argued that the disputed restrictions could be more extensive with regard to civil servants than to elected representatives. According to those judges, Latvia's democratic regime and institutional system had become sufficiently stable in the years since 1991 for individuals who had campaigned against the system ten years previously no longer to represent a real threat to the State. Consequently, the restriction on those persons' electoral rights was not proportionate to the legitimate aim pursued.

THE LAW

I. THE GOVERNMENT'S OBJECTION

50. In their letter of 11 February 2004 the Government informed the Court that the European Parliament Elections Act (*Eiropas Parlamenta vēlēšanu likums*), which was enacted by the Latvian Parliament on 29 January 2004 and entered into force on 12 February 2004, did not contain a provision similar to section 5(6) of the Parliamentary Elections Act. Consequently, the applicant was free to stand as a candidate in the elections to the European Parliament, which were to be held on 12 June 2004. The Government argued that, as a supra-national legislature, the European Parliament ought to be considered as a "higher" legislative body than the Latvian Parliament, and that "the applicant will be able to exercise her passive electoral rights effectively at an even higher level than that foreseen at the outset".

The Government acknowledged that no amendments had so far been made to the laws on parliamentary and municipal elections, so that the disputed restriction remained in force and the applicant remained disqualified from standing for Parliament and for municipal councils. However, they did not consider that this fact was really material to the outcome of the case. Latvia's accession to the European Union in spring 2004 marked the culmination of the transition period, i.e., the country's journey from a totalitarian to a democratic society, and the members of parliament had been aware of this. The Government also argued that the periodic re-consideration of the disputed provisions constituted a stable parliamentary practice (see paragraph 47 above) and that the restrictions complained of by the applicant were provisional in nature.

Against that background, the Government considered that the dispute at the origin of the present case had been resolved, and that the application should be struck out of the list in accordance with Article 37 § 1 (b) of the Convention.

51. The applicant disagreed. She acknowledged that she was entitled to stand in the European elections and that she intended to do so; however, this fact did not resolve the dispute. The applicant emphasised that the restrictions contained in the laws on parliamentary and local elections were still in force and that it was not at all certain that they would be repealed in the near future, especially since a large number of members of parliament seemed to favour their continued inclusion in the statute book. She also pointed out that the circumstances of the present case were very different from those in all the cases where the Court had indeed applied Article 37 § 1 (b). In short, the dispute had not been resolved and there was no reason to strike out the application.

52. In the Court's view, the question posed here is whether the applicant has in fact lost her status as a "victim" within the meaning of Article 34 of the Convention. In that connection, the Court refers to its settled case-law to the effect that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV; and *Ilaşcu and Others v. Moldova and Russia* [GC] (dec.), no. 48787/99, 4 July 2001). In the present case, the Court notes that the legislative provisions impugned by the applicant remain in force, and that she is still disqualified from standing both for Parliament and for municipal councils. As to the parliamentary practice referred to by the Government, this hardly suffices to affect the applicant's status as a "victim", since future repeal of the disputed restrictions is merely hypothetical and without any certainty. In any event, any such repeal would not negate the measures already taken against the applicant, namely the prohibition on her participation in the parliamentary elections of 1998 and 2002 and the forfeiture of her seat as Riga city councillor in 1999.

In so far as the Government refer to the opportunity for the applicant to take part in the European elections, the Court recognises that Article 3 of Protocol No. 1 is applicable (see *Matthews v. the United Kingdom* [GC], no. 24833/94, §§ 39-44 and 48-54, ECHR 1999-I). However, the fact that a person is entitled to stand for election to the European Parliament does not release the State from its obligation to respect his or her rights under Article 3 with regard to the national parliament.

53. In sum, the Latvian authorities have neither recognised nor, even less, redressed the violations alleged by the applicant. She remains a "victim" of those alleged violations, the dispute is far from being resolved, and there is accordingly no reason to apply Article 37 § 1 (b) of the Convention.

Accordingly, the Government's objection must be dismissed.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

54. The applicant complained that her disqualification from standing for election to Parliament on the ground that she had actively participated in the CPL after 13 January 1991 constituted a violation of her right to stand as candidate in parliamentary elections. This right is guaranteed by Article 3 of Protocol No. 1 to the Convention, 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. The parties' submissions

1. The applicant

55. The applicant considered that the reasons given for her disqualification should be examined in the light of the principles and conclusions identified by the Court in the *United Communist Party of Turkey and Others v. Turkey* judgment of 30 January 1998 (*Reports* 1998-I, pp. 21-22, §§ 45-46). In her opinion, the impact of her disqualification, on herself and on her comrades, was comparable to the dissolution of the Communist Party in the above-mentioned case. Equally, the applicant argued that the limitations on the rights guaranteed under Article 3 of Protocol No. 1 were to be analysed in the same way as the restrictions on the freedom of assembly and association authorised by Article 11 § 2 of the Convention. Consequently, the reasoning in the *United Communist Party of Turkey and Others* judgment, adopted under Article 11 of the Convention, was applicable *mutatis mutandis* to her case.

56. The applicant disputed the Government's arguments derived from the CPL's participation in the events of January and August 1991 and from the need to defend "an effective democracy". Firstly, she contested the allegations regarding the CPL's allegedly totalitarian and dangerous nature. In that connection, she quoted from the party's official programme, adopted in April 1990, which advocated "constructive cooperation between different political forces favourable to the democratic transformation of society" and "a society based on the principles of democracy [and] humanism". Equally, referring to the proceedings of the CPL's 25th Congress, the applicant argued that the party had had no intention at that time of restoring the former totalitarian communist regime.

Furthermore, the applicant denied the Government's submissions regarding the CPL's alleged illegality. She pointed out that the CPL was declared unconstitutional only on 23 August 1991 and that the party's

activities had remained perfectly legal until that date, including during the period after the events of January 1991.

57. Secondly, the applicant argued that membership of the CPL did not in itself suffice to prove a lack of loyalty towards Latvia. Indeed, of the 201 members of the Supreme Council, 106 had originally been members of the CPL and the division of members of parliament into two main camps had been based solely on their attitude to the Declaration of Independence and not on whether they had been members of that party.

Equally, the applicant considered that the CPL could not be accused of having attempted to overthrow the democratic regime. With regard to the events of January 1991, she repeated her own version of events, according to which there had been no attempt to usurp power. In this connection, she submitted a copy of the appeal by the CPL's parliamentary group, published on 21 January 1991, which denied that the Party had been involved in organising the armed incursions and deploring "political provocation ... aimed at ... misleading world opinion". In any event, the applicant emphasised that she herself had never been a member of the Committee of Public Safety. As to the events of 19 August 1991, the applicant submitted that there was evidence exculpating the CPL.

58. In any event, the applicant considered that the Republic of Latvia's ambiguous constitutional status during the period in question was an important factor to be taken into consideration under this point. In that connection, she noted that the Declaration of 4 May 1990 had established a transition period so that institutional links with the USSR could be gradually broken off. In reality, it had been a period of diarchy, during which Soviet and Latvian constitutional and legislative texts, and even some Soviet and Latvian institutions, coexisted and functioned in parallel throughout the national territory. The applicant acknowledged that the Constitutional Law of 21 August 1991 had ended the transition period; however, she submitted that it was impossible to declare null and void the very existence of that period. Since the legitimacy of the institutions which were then functioning in Latvian territory was not clearly established, one could not correctly speak of a coup d'état.

59. Equally, the CPL could not be criticised for having taken a pro-Soviet and anti-independence attitude during the transition period. Whilst acknowledging that the CPL and she herself had declared their firm support for a Latvia which enjoyed greater sovereignty but remained an integral part of the USSR, the applicant observed that, at the material time, there was a very wide range of opinions on the ways in which the country should develop politically, even amongst those members of parliament who supported independence in principle. In addition, leaders of foreign States had also been divided on this subject: some had been very sceptical about the liberation of the Baltic states and had preferred to adopt an approach of non-interference in the Soviet Union's internal affairs. In short, in

supporting one of the possible avenues for development, the CPL had in fact exercised its right to pluralism of political opinions, which was inherent in a democratic society.

60. The applicant considered ill-founded and unsubstantiated the Government's argument that to allow persons who had been members of the CPL after 13 January 1991 to become members of Parliament would be likely to compromise national security. She pointed out that the impugned restriction had not existed until 1995 and that, in the first parliamentary elections following restoration of the 1922 Constitution, three individuals in the same position as herself had been elected to parliament. In those circumstances, the applicant could not see how her election could threaten national security such a long time after the facts held against her.

61. In any event, the applicant considered that the criteria identified in the Court's case-law with regard to the political loyalty of civil servants could not be applied to current or potential members of a national parliament.

62. In so far as the Government referred to the Constitutional Court's judgment of 30 August 2000, the applicant referred to the dissenting opinion signed by three of the seven judges who had examined the case, finding that the disputed restriction was disproportionate. The applicant endorsed the arguments put forward by those three judges, particularly the contention that the Latvian democratic system had become sufficiently strong for it no longer to fear the presence within its legislative body of persons who had campaigned against the system ten years previously.

63. With regard to the Constitutional Court's restrictive interpretation of the electoral law, which presupposed evaluation of the individual responsibility of each person concerned, the applicant argued that nothing in her personal conduct justified the disputed measure, since she had never attempted to restore the totalitarian regime or overthrow the legitimate authorities. On the contrary, she had campaigned for democratisation and for reform within the CPSU, the CPL and society as a whole.

64. The applicant also argued that nothing in her personal conduct since the alleged facts justified the restriction on her electoral rights. Thus, subsequent to January 1990, she had campaigned in a non-governmental organisation, "*Latvijas Cilvēktiesību komiteja"* ("Latvian Committee for Human Rights"), and had co-chaired that organisation until 1997. Working within the committee, she had become very well known for her activities in providing legal assistance to thousands of individuals; she had helped to promote respect for human rights in Latvia and she had been responsible for implementing three Council of Europe programmes.

65. Finally, and contrary to the Government's submissions, the applicant considered that the disputed restriction was not provisional. In that connection, she pointed out that, although Parliament had indeed re-examined the electoral law before each election, this re-examination had

always resulted in an extension rather than a reduction in the number of circumstances entailing disqualification. Consequently, it had to be acknowledged that the disqualification of individuals who had been active within the CPL after 13 January 1991 was likely to continue. The measure reduced electoral rights to the point of impairing their very essence, and the free expression of the opinion of the people had been impeded in the present case.

2. The Government

66. The Government began by submitting a long description of the historical events related to the restoration of Latvian state independence. In particular, they referred to the following facts, which they considered common knowledge and not open to dispute:

(a) Having failed to obtain a majority on the Supreme Council in the democratic elections of March 1990, the CPL and the other organisations listed in section 5(6) of the Parliamentary Elections Act decided to take the unconstitutional route and set up a Committee of Public Safety, which attempted to usurp power and to dissolve the Supreme Council and the legitimate government. Such actions were contrary not only to Article 2 of the 1922 Constitution, which stated that sovereign power was vested with the people, but also to Article 2 of the Constitution of the Latvian SSR, which conferred authority to act on behalf of the people on elected councils (*soviets*) alone.

(b) The Central Committee of the CPL provided financial support to the special unit of the Soviet police which was entirely responsible for the fatal incidents of January 1991 (see paragraph 13 above); at the same time, the Committee of Public Safety publicly expressed its support for this militarised body.

(c) During the coup of 19 August 1991 the Central Committee of the CPL openly declared its support for the "National State of Emergency Committee", set up an "operational group" with a view to providing assistance to it and published an appeal calling on the public to comply with the regime imposed by this self-proclaimed and unconstitutional body.

67. In support of the above arguments, the Government submitted a copy of the Supreme Court's judgment of 27 July 1995, which found Mr A.R. and Mr O.P., former senior officials in the CPL, guilty of attempting to overthrow the legitimate authorities by violent means. In substance, this judgment established the above-mentioned events as historical facts.

68. The Government acknowledged that Parliament was not part of the "civil service" in the same way as the police or the armed forces. However, they considered that Parliament was a "public service" since, in enacting legislation, members of parliament were participating directly in the exercise of powers conferred by public law. Consequently, in the Government's opinion, the criteria identified by the Court under Articles 10

and 11 of the Convention with regard to restrictions on the political activity of civil servants were applicable by analogy to candidates for office and elected representatives.

69. With regard to the aim pursued by the impugned restriction, the Government observed that the disqualification from standing for election applied to those persons who had been active within organisations which, following the proclamation of an independent republic, had openly turned against the new democratic order and had actively sought to restore the former totalitarian communist regime. It was consequently necessary to exclude those persons from exercising legislative authority since, having failed to respect democratic principles in the past, there was no guarantee that they would now exercise their authority in accordance with such principles. In other words, the disqualification from standing for election was justified by the need to protect effective democracy, to which all of society was entitled, against a possible resurgence of communist totalitarianism. Relying on *Ahmed and Others v. the United Kingdom*, judgment of 2 September 1998 (*Reports* 1998-VI, p. 2395, § 52), the Government argued that the disputed disqualification was preventative in nature and did not require the factual existence of dangerous and undemocratic actions on the part of those persons. Referring also to the above-mentioned *Rekvényi* judgment (particularly § 41), the Government considered that the principle of a "democracy capable of defending itself" was compatible with the Convention, especially in the context of the post-communist societies of central and eastern Europe.

70. Furthermore, the Government were of the view that the above-mentioned *Vogt* judgment could not be relied upon in support of the applicant's submissions. Mrs Vogt's activities within the German Communist Party had been legal activities within a legal organisation. In contrast, in the present case, the enactment on 4 May 1990 of the Declaration on the Restoration of the Independence of the Republic of Latvia had created a new constitutional order, of which that Declaration had become the basis. Accordingly, during the period from 4 May 1990 to 6 June 1993, the date on which the 1922 Constitution was fully re-established, any action against the said Declaration or against the state system founded by it had to be considered unconstitutional and consequently illegal. The Government also disputed the applicant's assertion regarding the existence of a constitutional diarchy during the events of 1991.

71. In addition, the Government argued that the impugned restriction had the aim of protecting the State's independence and national security. Referring in that connection to the resolutions adopted in April 1990 by the CPL's 25th Congress, the Government noted that that party had always been hostile to the restoration of Latvia's independence and that one of its main aims had been to keep the country inside the Soviet Union. Accordingly, the Government considered that the very existence of a State

Party to the Convention was threatened in the instant case, and that granting access to the bodies of supreme State power to individuals who were hostile to that State's independence would be likely to compromise national security.

72. The Government were of the opinion that the restriction in question was proportionate to the legitimate aims pursued. In that connection, they emphasised that the impugned disqualification was not applicable to all those individuals who had officially been members of the CPL after 13 January 1991, but only to those who had "*acted*" or "*actively participated*" in the party's operations after the above-mentioned date, i.e. to persons who, in their administrative or representative functions, had threatened Latvia's democratic order and sovereignty. This restrictive interpretation of the electoral legislation had in fact been imposed by the Constitutional Court in its judgment of 30 August 2000.

73. The Government considered that, in the present case, the applicant's hostile attitude to democracy and to Latvia's independence had been clear since the CPL's 25th Congress, during which she chose not to align herself with the dissident progressive delegates, opting instead to remain with those who supported the "hard line" Soviet policy (see paragraph 10 above). Equally, the Government asserted that the Central Committee for Supervision and Audit had a leading position in the CPL's internal structure and that the applicant was a member of a sub-committee responsible for supervising implementation of the party's decisions and policies. The majority of decisions taken by CPL bodies reflected an extremely hostile attitude to the re-establishment of a democratic and independent republic. In that connection, the Government referred once again to the statement issued by the CPL's Central Committee on 13 January 1991, establishing the Committee of Public Safety and aimed at usurping power; however, they admitted that the applicant herself had not been present at the Central Committee's meeting on that date. In short, according to the Government, as one of those responsible for supervising implementation of the CPL's decisions, the applicant could not have failed to oppose an independent Latvia during the period in question.

The Government submitted that, although the applicant's position within the CPL sufficed in itself to demonstrate her active involvement with that party's activities, the courts had nonetheless based their reasoning on the degree of her personal responsibility rather than on a formal finding regarding her status in the party's organisational structure.

74. In the Government's opinion, the applicant's current conduct continued to justify her disqualification. Supporting their argument with numerous press articles, they submitted that the applicant's political activities were part of a "carefully scripted scenario" aimed at harming Latvia's interests, moving it away from the European Union and NATO and bringing it closer to the Commonwealth of Independent States. The Government referred to certain critical statements recently made by the

applicant about the State's current policy towards the Russian-speaking minority and the new Language Act; they also criticised the applicant's role in the organisation of public meetings on the dates of former Soviet festivals.

75. Finally, and still with regard to the proportionality of the disputed measure, the Government pointed out that, since the reinstatement of the 1922 Constitution, each successive parliament had examined the need to maintain the disqualification of individuals who had been active members of the CPSU or the CPL after 13 January 1991; that periodic re-examination thus constituted an established parliamentary practice. In those circumstances, the Government reiterated their argument that the restriction in question was provisional in nature. For the same reason, the restriction could not be regarded as an impairment of the very essence of electoral rights.

76. In view of all of the above, the Government considered that the applicant's disqualification from standing for election was proportionate to the legitimate aims pursued, and that there had therefore been no violation of Article 3 of Protocol No. 1 to the Convention in the instant case.

B. The Court's assessment

1. Establishment of the facts of the case

77. The Court observes, in the first place, that a number of facts in the present case are disputed between the parties. Thus, the applicant contests the Government's version of events with regard to the origins and nature of the first coup attempt in January 1991, the plebiscite of March 1991 and the CPL's collaboration with the perpetrators of the second attempted coup in August 1991 (see paragraphs 13-17, 57 and 66 above). In that connection, the Court wishes to reiterate that, in exercising its supervisory jurisdiction, its task is not to take the place of the competent national authorities but rather to review the decisions they delivered pursuant to their power of appreciation. In so doing, it has to satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts and that they committed no arbitrary acts (see, for example, the judgments in *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 39, ECHR 1999-VIII; *Vogt v. Germany*, cited above, p. 26, § 52 (iii); and *Socialist Party and Others v. Turkey*, 25 May 1998, *Reports* 1998-III, p. 1256, § 44). The Court also considers that it must abstain, as far as possible, from pronouncing on matters of purely historical fact, which do not come within its jurisdiction; however, it may accept certain well-known historical truths and base its reasoning on them (see *Marais v. France*, Commission decision of 24 June 1996, DR 86, p. 184, and *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX).

In the present case, the Court finds no indication of arbitrariness in the way in which the Latvian courts evaluated the relevant facts. In particular, it notes that the CPL's participation in the events of 1991 has been established by a Supreme Court judgment in the context of a criminal case (see paragraph 67 above). Equally, the Court does not have any reason to dispute the findings of fact made by the Riga Regional Court and the Civil Division of the Supreme Court with regard to the events of 1991 and the applicant's personal participation in the CPL's activities (see paragraphs 29-30 above). Moreover, the Court has no information at its disposal which would permit it to suspect the Latvian authorities of having distorted in any way the historical facts concerning the period in question.

2. The general principles established by the case-law of the Convention institutions

(a) Democracy and its protection in the Convention system

78. The Court recalls at the outset that democracy constitutes a fundamental element of "European public order". That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights. The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. This common heritage consists in the underlying values of the Convention; thus, the Court has pointed out on many occasions that the Convention was in fact designed to maintain and promote the ideals and values of a democratic society. In other words, democracy is the only political model contemplated by the Convention and, accordingly, the only one compatible with it (see, among many other examples, the above-mentioned *United Communist Party of Turkey and Others v. Turkey* judgment, pp. 21-22, § 45; *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 86, ECHR 2003-II; and, lastly, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 89, to be published in ECHR 2004).

79. However, it cannot be ruled out that a person or a group of persons will rely on the rights enshrined in the Convention or its Protocols in order to attempt to derive therefrom the right to conduct what amounts in practice to activities intended to destroy the rights or freedoms set forth in the Convention; any such destruction would put an end to democracy. It was precisely this concern which led the authors of the Convention to introduce Article 17, which provides: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any

activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention" (see *Collected Edition of the "Travaux Préparatoires": Official Report of the Consultative Assembly,* 1949, pp. 1235-1239). Following the same line of reasoning, the Court considers that no one should be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society (see *Refah Partisi and Others v. Turkey*, cited above, § 99).

80. Consequently, in order to guarantee the stability and effectiveness of a democratic system, the State may be required to take specific measures to protect it. Thus, in the above-cited *Vogt* judgment, with regard to the requirement of political loyalty imposed on civil servants, the Court acknowledged the legitimacy of the concept of a "democracy capable of defending itself" (loc. cit., pp. 25 and 28-29, §§ 51 and 59). It has also found that pluralism and democracy are based on a compromise that requires various concessions by individuals, who must sometimes be prepared to limit some of their freedoms so as to ensure the greater stability of the country as a whole (see *Refah Partisi and Others v. Turkey*, cited above, § 99). The problem which is then posed is that of achieving a compromise between the requirements of defending democratic society on the one hand and protecting individual rights on the other (see *United Communist Party of Turkey and Others v. Turkey,* cited above, p. 18, § 32). Every time that a State intends to rely on the principle of "a democracy capable of defending itself" in order to justify interference with individual rights, it must therefore carefully evaluate the scope and consequences of the measure under consideration, to ensure that the aforementioned balance is achieved.

81. Finally, with regard to the implementation of measures intended to defend democratic values, the Court has stated in its *Refah Partisi and Others v. Turkey* judgment, cited above (loc. cit., § 102):

> "The Court considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may 'reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime'".

(b) Article 3 of Protocol No. 1

82. The Court points out that Article 3 of Protocol No. 1 implies the personal rights to vote and to stand for election. Although those rights are important, they are not absolute. Since Article 3 recognises them without

setting them forth in express terms, let alone defining them, there is room for "implied limitations". In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see also the following judgments: *Mathieu-Mohin and Clerfayt v. Belgium* of 2 March 1987, Series A no. 113, p. 23, § 52; *Gitonas and Others v. Greece* of 1 July 1997, *Reports* 1997-IV, pp. 1233-1234, § 39; *Ahmed and Others v. the United Kingdom*, cited above, p. 2384, § 75; and *Labita v. Italy*, cited above, § 201). In that connection, and in the light of the pre-eminence of democracy in the Convention system, the Court considers that it must adhere to the same criteria applied with regard to the interference permitted by Articles 8 to 11 of the Convention: the only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from "democratic society" (see, *mutatis mutandis*, the above-cited judgments in the cases of *United Communist Party of Turkey and Others v. Turkey* pp. 21-22, § 45, and *Refah Partisi and Others v. Turkey*, § 86).

In any event, like all the other substantive provisions of the Convention and the Protocols thereto, Article 3 must be interpreted in the light of the principle of the effectiveness of rights inherent in the entire Convention system: this Article must be applied in such a way as to make its stipulations not theoretical or illusory but practical and effective (see *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II).

83. The Court further points out that the States enjoy considerable latitude in establishing constitutional rules on the status of members of parliament, including the criteria for declaring them ineligible. Although they have a common origin in the need to ensure both the independence of elected representatives and the freedom of electors, these criteria vary in accordance with the historical and political factors specific to each State; the multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned. However, the State's margin of appreciation in this regard is limited by the obligation to respect the fundamental principle of Article 3, namely "the free expression of the opinion of the people in the choice of the legislature" (see the above-cited judgments in the cases of *Mathieu-Mohin and Clerfayt v. Belgium*, pp. 23-24, § 54, and *Podkolzina v. Latvia*, § 33).

84. The Court notes that the former Commission was required on several occasions to consider whether the decision to withdraw an individual's active and passive election rights on account of his or her previous activities constituted a violation of Article 3 of Protocol No. 1. In practically all those cases, the Commission found that it did not. Thus, in the cases of *X. v. the Netherlands* (no. 6573/74, Commission decision of 19 December 1974, DR 1, p. 88) and *X. v. Belgium* (no. 8701/79, Commission decision of 3 December 1979, DR 18, p. 250), it declared inadmissible applications from two persons who had been convicted following the Second World War of collaboration with the enemy or "uncitizenlike conduct" and, on that account, permanently deprived of the right to vote. In particular, the Commission considered that "the purpose of legislation depriving persons convicted of treason of certain political rights and, more specifically, the right to vote [was] to ensure that persons who [had] seriously abused, in wartime, their right to participate in the public life of their country are prevented in future from abusing their political rights in a manner prejudicial to the security of the state or the foundations of a democratic society (see the above-cited *X. v. Belgium* decision, loc. cit.). Equally, in the case of *Van Wambeke v. Belgium* (no. 16692/90, decision of 12 April 1991), the Commission declared inadmissible, on the same grounds, an application from a former member of the *Waffen-SS*, convicted of treason in 1945, who complained that he had been unable to take part in the elections to the European Parliament in 1989.

Finally, in the case of *Glimmerveen and Hagenbeek v. the Netherlands* (applications nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, DR 18, p. 187), the Commission declared inadmissible two applications concerning the refusal to allow the applicants, who were the leaders of a proscribed organisation with racist and xenophobic traits, to stand for election. On that occasion, the Commission referred to Article 17 of the Convention, noting that the applicants "intended to participate in these elections and to avail themselves of the right [concerned] for a purpose which the Commission [had] found to be unacceptable under Article 17" (loc. cit.).

3. Application of those principles to the present case

(a) Do the criteria concerning the political activities of public servants apply to members of parliament?

85. According to the Government, the applicant's disqualification from standing for election must be analysed in the light of the same criteria and general principles applied to members of the civil and military forms of public service. In that connection, the Court points out that it has on several occasions acknowledged the legitimacy of restrictions on the political activities of police officers, civil servants, judges and other persons in State

service who exercise public authority (see the following above-cited judgments: *Rekvényi v. Hungary*, §§ 41 and 46, and *Vogt v. Germany*, pp. 28-29, § 58, as well as *Briķe v. Latvia* (dec.), no. 47135/99, 29 June 2000). However, in the cases cited above, the individuals subjected to the contested restrictions belonged to the executive or the judiciary, and the Court accepted that it was particularly important to maintain their political neutrality so as to ensure that all citizens received equal and fair treatment that was not vitiated by political considerations. In contrast, the present case concerns the legislature, which functions in accordance with fundamentally different principles. In protecting "the free expression of the opinion of the people", Article 3 of Protocol No. 1 is actually based on the idea of political pluralism; neither a parliament nor an individual member of parliament may, by definition, be "politically neutral".

Consequently, and assuming that a certain "duty of loyalty" also exists on the part of parliamentarians, the Court is of the opinion that it cannot be identical or even similar to that required of members of the public service.

(b) Did the applicant's disqualification from standing for election pursue a legitimate aim?

86. The Court points out that, as a general rule, in assessing the limitations imposed by States on the rights guaranteed under Article 3 of Protocol No. 1, it takes a similar approach to that applied in analysing interference within the meaning of Articles 8 to 11 of the Convention (see paragraph 82 above). However, in contrast to the situation with regard to those four provisions, the Court is not bound by an exhaustive list of "legitimate aims" with regard to Article 3 of Protocol No. 1; thus, in the above-cited *Podkolzina* judgment, it recognised the legitimacy of the State's "interest ... in ensuring that its own institutional system functions normally" (loc. cit., § 34). Having regard to the respondent Government's margin of appreciation, the Court accepts that the impugned measure pursues at least three legitimate aims referred to by the Government: protection of the State's independence, protection of the democratic order and protection of national security.

(c) Is the restriction proportionate to the aim which it pursues?

87. It remains to be determined whether the measure in question is proportionate to the legitimate aims mentioned above. In the light of the Government's observations, the Court considers that this form of disqualification from standing for election may serve a double function and may be analysed in two ways: as a punitive measure, i.e. as a sanction for having demonstrated uncitizenlike conduct in the past, but also as a preventative measure, where the applicant's current conduct is likely to endanger democracy and where his or her election could create an

immediate threat to the State's constitutional system. The Court will examine each of these two aspects in turn.

i. The punitive aspect

88. With regard, firstly, to the punitive aspect, the Court acknowledges its legitimacy. However, it considers that, generally speaking, the measure in question must remain temporary in order to be proportionate. The Court is unable to agree with the Government's argument that the applicant's disqualification from standing for election was merely "temporary" or "provisional" in nature. Admittedly, the disqualification cannot be described as "life-long", in that it has not been expressly stated that the situation will never change; nonetheless, in the Court's opinion, the restriction is indeed permanent, in that it is of indefinite duration and will continue until the relevant legislation is repealed.

Admittedly, in several cases brought before it (see paragraph 84 above) the former Commission found that instances of permanent disqualification were proportionate. However, in all of those cases, the applicants had been convicted of particularly grievous criminal offences, such as war crimes or high treason; in contrast, in the present case, the applicant's activities have not given rise to any criminal penalties.

ii. The preventative aspect

89. As to the preventative aspect of the disqualification from standing for election, the Court notes that the Government's submissions may be summarised in the form of two main arguments. Firstly, it may be deduced that in 1991 the applicant committed acts of such seriousness that they remain in themselves sufficient to justify her disqualification, even in the absence of specific actions by her at the present time. Secondly, the Government submits that the applicant's current conduct also justifies the disputed measure.

α – The applicant's conduct in 1991

90. As to the first argument, the Court notes at the outset that the reference date chosen by the Latvian legislature is not 23 August 1991, the date on which the CPL was declared unconstitutional, but 13 January 1991, the date of the first coup d'état supported by that party. The Government submit that the CPL was to be considered illegal from the latter date. The Court cannot accept that argument. It points out that, when examining compliance with the "lawfulness" criterion in respect of the interference provided for in Articles 8 to 11 of the Convention, it has on numerous occasions stated that any restrictive provision must be "foreseeable", this requirement being closely linked to the principle of legal certainty (see, most recently, *Maestri v. Italy* [GC], no. 39748/98, § 30, to be reported in ECHR 2004). Yet, according to the information available to the Court, no

legislation explicitly or even implicitly prohibited the operations of the CPL or of the CPSU prior to August 1991. Consequently, in becoming involved or participating actively in those organisations during the period in question, the applicant could not reasonably have foreseen the adverse consequences that might arise in the future. Accordingly, she cannot be accused of having been active in an illegal association (see *Vogt v. Germany*, cited above, p. 30, § 60, *in fine*).

91. The Court further observes that it is not its role to rule on the historical controversy between the parties concerning the events of 1991. As it noted above (paragraph 77), the Government's version of the facts seems neither arbitrary nor unreasonable; in particular, the Court considers that the totalitarian and anti-democratic nature of the ruling communist parties in the States of central and eastern Europe prior to 1990 is a well-known historical reality (see, *mutatis mutandis*, *Rekvényi v. Hungary*, cited above, §§ 41 and 47). Equally, to the extent that the applicant refers to the CPL's official programme and to its alleged moves towards democratisation after 1990 (see paragraph 56 above), the Court points out that a political party's constitution and programme cannot be taken into consideration as the only criterion in determining its objectives and intentions. The political experience of the Contracting States has shown that in the past political parties with aims contrary to the fundamental principles of democracy have not revealed such aims in their official publications until after taking power. For that reason, the Court has always noted that it cannot be ruled out that the programme of a political party may conceal objectives and intentions different from those that it proclaims; to verify that it does not, the content of the programme must be compared with the actions of the party's leaders and members and the positions they defend (see *Refah Partisi and Others v. Turkey*, § 101; *United Communist Party of Turkey and Others v. Turkey*, p. 27, § 58; and *Socialist Party and Others v. Turkey*, pp. 1257-1258, § 48, all cited above).

92. That being so, the Court does not exclude the possibility that the impugned restriction could have been justified and proportionate during the first years after the re-establishment of Latvia's independence. It is undeniable that the authorities of a newly-established State are best placed to evaluate the risk of "fall-out" from a totalitarian political regime from which the country concerned has just freed itself and to assess the need for preventative measures. In those circumstances, the Court accepts that to bar from the legislature persons who had held positions within the former regime's ruling body and who had also actively supported attempts to overthrow the new democratic system may be a legitimate and balanced solution, without it being necessary to look into the applicant's individual conduct; such a measure would be fully compatible with the concept of a "democracy capable of defending itself" relied on by the Government. After a certain time, however, this ground is no longer sufficient to justify the

preventative aspect of the restriction in question; it then becomes necessary to establish whether other factors, particularly an individual's personal participation in the disputed events, continue to justify his or her ineligibility. Furthermore, the Court notes that this principle was, in essence, acknowledged by the Latvian Constitutional Court in its judgment of 30 August 2000, encouraging the legislature to re-examine periodically the need to maintain the disputed measure (see paragraph 48 above).

93. The Court notes that, according to the disqualification mechanism introduced by the Latvian electoral legislation, the courts' jurisdiction is strictly limited to a factual finding of participation or non-participation by the person concerned in CPL or CPSU activities subsequent to the above-mentioned date; it does not imply the power to draw the legal consequences of such participation, which are already laid down by the legislation. Consequently, and having regard to the interpretation of the term "active participation" given by the Constitutional Court, the courts have only limited powers to assess the real danger posed to the current democratic order by each individual. In the Court's opinion, such inflexibility is striking, in that it deprives the national courts of jurisdiction to rule on whether the disputed disqualification remains proportionate over time. Accordingly, the Court must itself examine whether the applicant's conduct more than ten years ago still constitutes sufficient justification for barring her from standing in parliamentary elections.

94. The Court notes firstly that, unlike certain other persons (see paragraph 67 above), the applicant has never been convicted of a criminal offence in connection with her activities within the CPL. Secondly, it notes that in August 1991 a special committee of the Supreme Council was instructed to investigate the participation of certain members of parliament in the second coup d'état, but that the applicant was not one of the fifteen members of parliament who were removed from their seats following this investigation (see paragraph 20 above). The Court therefore concludes that no sufficiently serious misconduct on the applicant's part had been proven.

It is true that, in its judgment of 30 August 2000, the Constitutional Court imposed a restrictive interpretation of section 5(6) of the Parliamentary Elections Act, emphasising that the restriction in question had been "limited... to the degree of each individual's personal responsibility" and that it was "directed only against those who attempted ... to re-establish the former regime through active participation". However, although the documents in the case file show that the applicant held an important post within the CPL and that she took part in meetings of that party's governing bodies, none of the evidence produced by the Government proves that she herself committed specific acts aimed at destroying the Republic of Latvia or at restoring the former system. Furthermore, the Government themselves acknowledge that the applicant was absent from the meeting of the CPL's Central Committee on 13 January 1991 at which the party decided to

participate in the creation of the Committee of Public Safety; nor has it been contended that the applicant was a member of that committee.

95. Finally, the Court notes that the disputed restriction was not inserted in the electoral law until 1995 and did not exist at the time of the previous elections in 1993. That being so, it questions why parliament, if it considered that former active members of the CPSU and the CPL were so dangerous for democracy, did not enact a similar provision in 1993 – scarcely two years after the events complained of – but waited until the following elections. In addition, the applicant alleges - and this has not been denied by the Government - that three persons who were in the same position as the applicant were elected to parliament in the 1993 elections (see paragraph 60 above), without this entailing any adverse consequences for the State.

96. Consequently, in the light of the observations and information submitted by the parties, the Court concludes that the applicant's individual conduct in 1991 was not sufficiently serious to justify her disqualification from standing for office at present.

β – The applicant's current conduct

97. The question remains of the applicant's current conduct. In that connection the Court points out that, as a general rule, its scrutiny must be based on the domestic authorities' disputed decisions and the legal grounds on which those authorities relied, and that it is unable to take into account alternative legal grounds suggested by the respondent Government in order to justify the measure in question if those grounds are not reflected in the decisions of the competent domestic authorities (see *Slivenko v. Latvia* [GC], no. 48321/99, § 103, to be reported in ECHR 2003). As the Court has noted above, the procedure for disqualification introduced by the Parliamentary Elections Act is very firmly focused on the past and does not allow for sufficient evaluation of the current threat posed by the persons concerned. Consequently, the Court considers it expedient to examine whether the Government's arguments concerning the post-1991 period could justify the applicant's disqualification from standing for election.

98. The Court notes that the accusations levelled at the applicant by the Government concern mainly the fact of defending and disseminating ideas which are diametrically opposed to the Latvian authorities' official policy and which are unpopular among a large proportion of the population (see paragraph 74 above). However, the Court points out that there is no democracy without pluralism. On the contrary, it is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised and those which offend, shock or disturb a section of the population (see, *mutatis mutandis*, *Freedom and Democracy Party (ÖZDEP) v. Turkey,* cited above, §§ 39 and 41). A person or an association may promote a change in

the law or even the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles (see *Refah Partisi and Others v. Turkey*, cited above, § 98). In the present case, there is no factual evidence before the Court enabling it to conclude that the applicant has failed to comply with either of those conditions.

With regard, firstly, to the ideas advocated by the applicant concerning the Russian-speaking minority in Latvia and the legislation on language matters, the Court discerns no evidence of anti-democratic leanings or incompatibility with the fundamental values of the Convention (see, *mutatis mutandis*, *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, § 45, 12 November 2003). The same conclusion is inescapable as regards the means used by the applicant to attain her political objectives. In particular, she has never been accused of having been secretly active within the CPL after the latter's dissolution, let alone of having sought to re-establish that party in its previous totalitarian form. As regards the various activities criticised by the Government, the Court notes that they are not prohibited by the Latvian legislation, and that the applicant has never been investigated for or convicted of any offence. In sum, the Government have not supplied information about any specific act by the applicant capable of endangering the Latvian State, its national security or its democratic order.

4. Conclusion

99. Having regard to all the above, the Court concludes that the permanent disqualification from standing for election to the Latvian Parliament imposed on the applicant on account of her activities within the CPL after 13 January 1991 is not proportionate to the legitimate aims which it pursued and curtails the applicant's electoral rights to such an extent as to impair their very essence, and that its necessity in a democratic society has not been established. Accordingly, there has been a violation of Article 3 of Protocol No. 1 in this case.

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

100. The applicant considers that her disqualification from standing for election to Parliament or to municipal councils also amounts to a violation of Articles 10 and 11 of the Convention. In so far as they are relevant to the present case, these Articles provide:

Article 10

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, ... for the protection of the reputation or rights of others ..."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. The parties' submissions

1. The applicant

101. The applicant acknowledged that the interference in issue was "prescribed by law" within the meaning of Articles 10 § 2 and 11 § 2 of the Convention. However, referring to the dissenting opinion by the minority of Constitutional Court judges, she argued that section 5(6) of the Parliamentary Elections Act was disproportionate. Equally, the applicant considered that the Government's submissions concerning the legitimate aim pursued by the measure in question and its proportionality were unsubstantiated; in particular, she maintained that neither the *Rekvényi* judgment, cited above, nor Article 17 of the Convention could be used to support the Government's position in the present case.

2. The Government

102. The Government acknowledged that the restriction in issue amounts to an interference with the applicant's enjoyment of her rights as guaranteed by Articles 10 and 11 of the Convention. However, they considered that this interference complied with the requirements of the second paragraph of each of those Articles.

103. In the first place, the Government submitted that the impugned interference was "prescribed by law". Secondly, with regard to the aims pursued by the disputed measure, the Government referred to their submissions under Article 3 of Protocol No. 1. Thus, they alleged that the interference pursued legitimate aims, namely the protection of national security and of the rights of others to an effective political democracy.

104. The Government were also of the opinion that the impugned measure was "necessary in a democratic society". They argued that the measure had to be considered in the light of the country's historical and political context and bearing in mind the margin of appreciation enjoyed by the States in this regard. In that connection, the Government reiterated the arguments already submitted with regard to the applicant's complaints under Article 3 of Protocol No. 1, to the effect that the applicant's disqualification from standing for election should be assessed using the same criteria as for restrictions on the political activities of civil servants and other public-sector employees (see paragraph 68 above). In particular, the Government argued that the opposing conclusions as to the existence of a violation of Articles 10 and 11 reached by the Court in the above-mentioned *Vogt* and *Rekvényi* cases were due to the objective difference in the level of political development in the two countries concerned. Thus, the existence of a "pressing social need" was not demonstrated in Germany's stable democratic system, while such a need did exist in Hungary, a newly democratic State going through a transitional period; the situation in Latvia resembled that of Hungary in many respects.

Finally, the Government pointed out that the impugned restriction was limited to the official position of member of parliament, and did not prohibit the applicant from expressing her political opinions or from being active within a party. Accordingly, the restriction was applied in such a way as to ensure a distinction between private and official activities. In short, the interference in question was proportionate to the legitimate aims pursued.

105. In the alternative, the Government relied on Article 17 of the Convention, prohibiting the abuse of individual rights under the Convention. In so far as this part of the application concerned the applicant's participation in the CPL, Article 17 prevented the applicant from availing herself of the rights guaranteed by Articles 10 and 11 of the Convention.

B. The Court's assessment

106. In the present case, the parties agreed that there had been an interference with the exercise of the applicant's right to freedom of association within the meaning of the second paragraph of Article 11 of the Convention, and that that interference was "prescribed by law". The Court sees no reason to decide otherwise. It points out that such interference

cannot be justified under Article 11 except where it had a legitimate aim or aims under paragraph 2 and was "necessary in a democracy society" in order to achieve these aims.

107. The Court considers that the impugned measure may be considered to have pursued at least one of the legitimate aims set out in paragraph 2 of Article 11 of the Convention: the protection of "national security" (see paragraph 86 above).

108. As to the proportionality of the disputed measure, the Court points out that the adjective "necessary", within the meaning of Article 11 § 2, does not imply the same flexibility as terms such as "acceptable", "reasonable" or "appropriate"; "necessity" always implies "a pressing social need" (see, among other authorities, *Vogt v. Germany,* cited above, p. 26, § 52 (ii)). In that connection, the Court refers to the findings it has just reached with regard to Article 3 of Protocol No. 1. It points out that the party of which the applicant was an active member could not be said to have been "illegal" at the material time (see paragraph 90 above) and that the Government have provided no information about any specific act by the applicant aimed at destroying the newly-restored Republic of Latvia or its democratic order (see paragraph 94).

In so far as the Government refer to the Court's case-law concerning restrictions on the political activities of civil servants, members of the armed forces, members of the judiciary or other members of the public service, the Court points out that the criteria established by its case-law with regard to those persons' political loyalty cannot as such be applied to the members of a national parliament (see paragraph 85 above). The Court finds no cause to arrive at a different conclusion with regard to members of local councils, who are also elected by the people in accordance with the principles of pluralist democracy and are likewise responsible for taking political decisions. In summary, the second sentence of Article 11 § 2 of the Convention, authorising "lawful restrictions" with regard to "members of the armed forces, of the police or of the administration of the State" does not apply to members of parliament or to members of the elected bodies of local authorities.

109. In so far as the Government rely on Article 17 of the Convention, the Court reiterates that the purpose of this provision is to prevent the principles laid down by the Convention from being exploited for the purpose of engaging in any activity or performing any act aimed at the destruction of the rights and freedoms set forth in the Convention (see *Preda and Dardari v. Italy* (dec.), nos. 28160/95 and 28382/95, ECHR 1999-II). In particular, one of the main objectives of Article 17 is to prevent totalitarian or extremist groups from justifying their activities by referring to the Convention. However, in the present case, the applicant's disqualification from standing for election is based on her previous political involvement rather than on her current conduct, and the Court has just found

that her current public activities do not reveal a failure to comply with the fundamental values of the Convention (see paragraph 98 above). In other words, there is no evidence before the Court that would permit it to suspect the applicant of attempts to engage in any activity or perform any act aimed at the destruction of the rights and freedoms set forth in the Convention or the Protocols thereto. In this area, there is a clear distinction between the present case and the *Glimmerveen and Hagenbeek* case, cited above, in which the applicants' conviction and the annulment of their electoral list were based on their real and specific conduct at the material time, or the *German Communist Party and Others v. Germany* case (no. 250/57, Commission's report of 20 July 1957, Yearbook 1, pp. 222-225), in which the dissolution of the applicant party was based on the views expressed in its programme, which were contrary to democracy. Accordingly, the Court considers that Article 17 of the Convention is not applicable in the present case.

110. It follows that the applicant's disqualification from standing for election to Parliament and local councils on account of her active participation in the CPL, maintained more than a decade after the events held against that party, is disproportionate to the aim pursued and, consequently, not necessary in a democratic society. There has therefore been a violation of Article 11 of the Convention.

111. The Court considers that the finding of a violation of Article 11 renders it unnecessary for the Court to rule separately on compliance with the requirements of Article 10 in this case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

113. The applicant pointed out that, when the Civil Affairs Division of the Supreme Court delivered its judgment on 15 December 1999, she lost her seat as a Riga City Councillor (see paragraph 31 above), and thus the salary that she received in that capacity. After December 1999 and until the following municipal elections, held in March 2001, she was replaced by another member of her party whose name followed hers on the relevant electoral list and who thus obtained the applicant's seat, which had fallen vacant. That new councillor received a net salary of 1,690.50 lati (LVL) for

2000 and a net salary of LVL 546 for the first three months of 2001; in support of those figures, the applicant supplied copies of her replacement's tax declarations. The applicant claimed that these were the exact amounts that she would have received had she not been removed from her seat. She thus submitted that she had sustained real pecuniary damage in the shape of loss of earnings, the total amount of which was LVL 2,236.50 (or about 3,450 euros (EUR)).

114. The Government argued that, according to the Court's settled case-law, Article 3 of Protocol No. 1 was not applicable to municipal elections. Consequently, there was no link between the violation alleged by the applicant and the pecuniary damage she claimed to have sustained.

115. The Court acknowledges that Article 3 of Protocol No. 1 is inapplicable to local elections. However, it has also just found a violation of Article 11 of the Convention, on account of both the applicant's disqualification from standing for Parliament and her removal from her post as Riga City Councillor. In leaving the municipal council, the applicant sustained genuine pecuniary damage (see, in particular, *Sadak and Others v. Turkey (no. 2)*, nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, § 56, ECHR 2002-IV). Given that the Government did not dispute the accuracy of the amounts claimed by the applicant, the Court considers that it can accept them. It therefore decides to award the applicant LVL 2,236.50 under this head.

B. Non-pecuniary damage

116. The applicant claimed EUR 75,000 by way of compensation for the anguish, humiliation and practical disadvantages that she suffered as a result of her removal from her municipal seat and the impossibility of standing as candidate in two subsequent parliamentary elections. As an example, she argued that in January 2002 she had won an open competition for the post of chairperson of a municipal committee for property privatisation; however, following a virulent press campaign against her, in which her reputation was attacked, Riga City Council refused to endorse the competition's results and to appoint her to that post. The applicant was convinced that this event was directly linked to the violations of her fundamental rights under the Convention.

117. The Government argued that the poor esteem in which the applicant was held by a large part of Latvian society was due solely to her political activities in the past. Accordingly, it was her own conduct which had ruined her reputation and her career, and her misadventures were completely unrelated to the domestic courts' impugned decisions. In any event, the Government considered that the amount claimed by the applicant was excessive, regard being had in particular to the standard of living and the level of income in Latvia at present. Consequently, they submitted that the

finding of a violation would in itself constitute sufficient redress for any non-pecuniary damage that the applicant might have suffered.

In the event of the Court deciding to award the applicant compensation for non-pecuniary damage, the Government asked that it be formulated in lati, the Latvian national currency, rather than in euros.

118. Like the Government, the Court considers that no direct causal link has been shown between the violations found and Riga City Council's refusal to endorse the results of the competition in January 2002. However, it cannot deny that the applicant sustained non-pecuniary damage as a result of being prevented from standing as a candidate in the parliamentary election and of being removed from her post as city councillor (see, *mutatis mutandis*, *Podkolzina v. Latvia*, cited above, § 52). Consequently, deciding on an equitable basis and having regard to all the circumstances of the case, the Court awards her EUR 10,000 in respect of non-pecuniary damage.

C. Costs and expenses

119. The applicant requested reimbursment of the costs incurred in preparation and presentation of her case before the Court. She claimed the following sums, which she wished to receive in euros:

a) LVL 1,000 in respect of fees for Mr A. Ogurcovs, the Latvian lawyer who represented her before the Latvian courts. The applicant submitted no invoices in substantiation of this claim; she claimed that Mr Ogurcovs had lost all the invoices when moving office. However, she considered this sum to be reasonable, having regard to the fees for legal aid payable in Latvia;

b) a total of 12,100 pounds sterling (GBP), exclusive of value-added tax, for 121 hours of work by Mr W. Bowring, the applicant's lawyer, GBP 3,500 of which corresponded to 35 hours of work subsequent to the hearing on 15 May 2003;

c) LVL 60.60 in respect of the costs of the applicant's correspondence with the Court and GBP 117.77 under the same head for the period subsequent to 7 April 2003;

d) GBP 475.31 in respect of travel and subsistence costs for the applicant and Mr Bowring, to enable them to attend the hearing in Strasbourg on 15 May 2003.

120. The Government questioned the evidence submitted in support of the majority of the sums claimed by the applicant. Thus, they emphasised that, in the absence of supporting documents, there was no evidence that Mr Ogurcovs had provided the alleged services. With regard to Mr Bowring, the only costs acknowledged by the Government were the costs for correspondence with the Court and a part of the travel and subsistence costs. As to Mr Bowring's fees, the Government submitted a video recording of a television programme in which the applicant had taken part; during that programme, the applicant replied to one of the presenter's

questions by stating that "Mr Bowring [was her] friend" and that she "ha[d] not paid him anything". In those circumstances, the Government stated that the bills submitted by Mr Bowring were nothing but bogus documents drafted solely for the purposes of the proceedings pending before the Court; consequently, they objected to reimbursement of those fees. In the alternative, the Government argued that the total amount claimed by the applicant was excessive, and asked that the amount of any award for costs and expenses be expressed in lati.

121. In reply to the Government's arguments, the applicant confirmed the validity of the bills issued by Mr Bowring. She explained that she had indeed paid him nothing to date; however, their contract stipulated that, in the event of a favourable decision by the Court, she would be obliged to pay him the totality of the invoiced sums. According to the applicant, this was a very widespread practice in legal representation, including before the Court. Contrary to the Government's request, the applicant urged the Court to express the amount awarded in euros rather than in lati.

122. The Court reiterates that, to be entitled to an award of costs and expenses under Article 41 of the Convention, the injured party must have genuinely "incurred" or "sustained" them (see, among many other authorities, *Eckle v. Germany (Article 50)*, judgment of 21 June 1983, Series A, no. 65, p. 11, § 25). However, this principle must be interpreted in the light of the overall objectives pursued by Article 41. The Court has accepted that the high costs of proceedings may of themselves constitute a serious impediment to the effective protection of human rights, and that it would be wrong for the Court to give encouragement to such a situation in its decisions awarding costs under Article 41 (see *Bönisch v. Austria* (*Article 50*), judgment of 2 June 1986, Series A no. 103, p. 9, § 15). In those circumstances, reimbursement of fees cannot be limited only to those sums already paid by the applicant to his or her lawyer; indeed, such an interpretation would discourage many lawyers from representing less prosperous applicants before the Court. In any event, the Court has always awarded costs and expenses in situations where the fees remained, at least in part, payable by the applicant (see, for example, *Kamasinski v. Austria*, judgment of 19 December 1989, Series A no. 168, p. 47, § 115; *Koendjbiharie v. the Netherlands*, judgment of 25 October 1990, Series A, 185-B, p. 42, § 35; and *Iatridis v. Greece* [GC] (*just satisfaction*), no. 31107/96, § 55, ECHR 2000-XI). In the present case, there is nothing to suggest that the bills drawn up by Mr Bowring are bogus or that the applicant has decided not to pay them.

123. The Court further reiterates that, in order to be reimbursed, the costs must relate to the violation or violations found and must be reasonable as to quantum. In addition, Rule 60 § 2 of the Rules of Court provides that itemised particulars must be submitted of all claims made under Article 41 of the Convention, together with the relevant supporting documents or

vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Lavents v. Latvia*, no. 58442/00, § 154, 28 November 2002). Equally, the Court may award the injured party payment not only of the costs and expenses incurred in the proceedings before it, but also those incurred before the domestic courts to prevent or rectify a violation found by the Court (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 45, ECHR 1999-I, and *Rotaru v. Romania* [GC], no. 28341/95, § 86, ECHR 2000-V).

In the present case, the Court considers that, in the absence of the relevant vouchers, it cannot allow the request for reimbursement of Mr Ogurcovs's fees. As to Mr Bowring's bills, it observes that several references are fairly general and do not substantiate the specific nature of the legal services rendered. In any event, the overall sum claimed by the applicant in respect of costs and expenses is somewhat excessive. On the other hand, the Court does not deny that the case was very complex, which had an undoubted bearing on the costs of preparing the application. Finally, it notes that the applicant and her lawyer attended the hearing on 15 May 2003 without having first obtained legal aid. In those circumstances, and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant the sum of EUR 10,000 to cover all heads of costs taken together. To this amount is to be added any value-added tax that may be chargeable (see *Lavents v. Latvia,* cited above, § 154).

C. Default interest

124. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objection that the applicant was not a victim;

2. *Holds* by five votes to two that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

3. *Holds* by five votes to two that there has been a violation of Article 11 of the Convention, and that it is not necessary to examine separately the complaint under Article 10 of the Convention;

4. *Holds* by five votes to two

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

i. LVL 2,236.50 (two thousand two hundred and thirty-six lati and fifty santimi) for pecuniary damage;

(i) EUR 10,000 (ten thousand euros), to be converted into Latvian lati at the rate applicable on the date of settlement, for non-pecuniary damage;

iii. EUR 10,000 (ten thousand euros), to be converted into Latvian lati at the rate applicable on the date of settlement, for costs and expenses;

iv. any tax that may be payable on the above sums;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 17 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinions of Mr Bonello and Mr Levits are annexed to this judgment.

C.L.R.*.
S.N.*.

DISSENTING OPINION OF JUDGE BONELLO

Some relevant facts

1. These have been recounted in considerable detail in the judgement.[1] For the purposes of this opinion I believe the following ought to be highlighted.

1.1. The applicant had been, since 1971, an activist, and eventually a prominent member, of the Latvian Communist Party (CPL) a regional branch of the Communist Party of the Soviet Union in Latvia. This nation had lost its independence and its democratic regime in 1940.

1.2 On May 4, 1990 Latvia declared its independence from the Soviet Union. At that time the applicant was an elected member of the Supreme Council of the Soviet Socialist Republic of Latvia. The CPL on that same day condemned the declaration of independence and requested the Soviet Union to intervene.

1.3. In January 1991, according to the respondent Government, the Soviet authorities started military action against the government of independent Latvia. Several persons were killed and wounded in the streets and a "coup d'état" was organised to overthrow the independent government. The Plenum of the CPL pressed for the dissolution of the Supreme Council of Latvia, to be replaced by a so-called Committee of Public Safety (which included the CPL). This proclaimed the government had forfeited its powers, and claimed to have assumed those powers itself. This coup failed after armed battles in the streets of Riga.

1.4. In August 1991 a "coup d'état" took place in Moscow, by which power was taken over by a State of Emergency Committee. The Riga CPL instantly pledged its support to the Committee and appealed to the Latvian people to cooperate with the new Soviet revolutionary Committee.

1.5. The law relating to municipal and general elections excludes those who "participated actively after the 13 January 1991" (date of the coup and popular uprising) in the CPL, the CPUS and some other named organisations. The applicant was barred from standing as candidate in the municipal election of 1997 and the parliamentary elections of 1998. She challenged that ban; she admitted her membership of the CPL and her being an official in the Central Control and Audit Committee of the CPL up to 10 September 1991, when the CPL was officially dissolved; but claimed this ban violated her rights under international conventions.

[1] Para 7 – 37.

1.6 In fully adversarial proceedings in 1998 – 1999, three levels of jurisdiction of the Latvian courts established that the applicant had actively participated in the CPL after 13 January 1991 and this in practice confirmed she had forfeited the right to stand for election, as provided for by Latvian electoral law.

1.7 The applicant claims that this disenfranchisement violates her rights under Article 3 of Protocol No1.

The proportionality test

2.1 I am fundamentally in disagreement with the majority's finding that the ban on standing for election provided for by law (in relation to those who persisted in participating actively inside the CPL after the failed "coup d'état" of January 1991), was disproportionate to the legitimate aims pursued by the law.

2.2. It goes almost without saying it is my "preferred position" that everyone should, in principle, enjoy with the minimum of hindrance, all fundamental rights guaranteed by the Convention, including that of standing for political election. This does not, however, lead me to justify the attainment of these desired optimums even in defiance of historical realities, the weakness of emergent and fragile pluralisms and the contradictions faced by a democracy called to contain democratically those who consider democracy, at best, expendable and, at worst, wholly detrimental. I do not believe that the majority have reached their conclusions only through an *a posteriori* rationalisation of their own 'preferred positions'. But I cannot find sufficient value in the other reasons.

2.3 It is my belief that the judicial tensions underlying this controversy should have been settled in the light of the Court's doctrine, reiterated only recently, that "A political party whose leaders ... put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy, cannot lay claim to the Convention's protection against penalties imposed on those grounds."[1] I have no difficulty in transferring the thrust of this reasoning from political parties to high-ranking officials in political parties.

2.4 The Court has also held that "The freedoms guaranteed by Article 11 and by Articles 9 and 10 of the Convention, cannot deprive the authorities of the State in which an association, through its activities, jeopardises the State's institutions, of the right to protect those institutions."[2] The line of reasoning that justifies the curtailment of freedom of expression and of association, should govern the political rights implicit in Article 3 of Protocol No. 1, like that of standing for election.

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[1] *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 98, ECHR 2003-II, and case law there cited.

2.5. I am not unduly impressed by the plea that the applicant does not, as of today, pose a clear and imminent threat to the survival of democracy in Latvia. Fortunately – but hardly thanks to her and her like-minded associates who vote Communist and dream Neanderthal - activists like her evoke compassion and pathos rather than shock-waves of terror. Latvian democracy, after the horrific and blood-splattered coup meant to reverse the clock of history to the time-freeze in which the applicant is trapped, can today well survive her antics.

2.6. The fundamental question facing the Court was, in my view, the following: is the State justified in limiting political freedoms *only* when the survival of democracy is threatened? Or is it also justified to restrict some political rights when the authority, the image and the credibility of democracy are at stake? These, on my scale, are values to be protected, cherished and fortified, almost as much as the physical survival of democracy itself. In my book, a State is fully entitled in terms of its own enlightened sovereign policy, not to allow among the players on the democratic stage those who play the game of democracy by their own aberrant rules and for their own aberrant purposes.

2.7. It falls on the Strasbourg Court to exercise the maximum of judicial restraint when it comes to substituting its own rarefied and essentially second-hand vision of what is suitable for a democracy, to that of the prime guarantor of democratic order – which is the democratic State itself. I ask myself if the image of democracy is enhanced by according exactly the same rights and privileges to those who are delighted to die for democracy, as to those who are delighted to live with the negation of democracy. I can think of very few reasons why democracy should morally subsidize those who hold it in contempt.

2.8 In my opinion, it ill-suits the Court to delegitimise a State's efforts to uphold the image, the authority and the credibility of the democratic model when, in the supreme interest of democracy, it opts not to extend each and every democratic faculty to those who, given the least opportunity, would only turn those faculties to the destruction of democracy itself.

"Wide margin of appreciation"

3.1 The Court, (not differently from the Commission) has, since its infancy, held that, in matters of limitations imposed by the State on the ability of persons to vote and to stand for political election, the national authorities enjoy "a wide margin of appreciation", though it is for the Court to determine in the last resort whether the requirements of Article 3 of

Protocol No 1 have been complied with.[1] The case-law of the Court seems to distinguish, in descending order of amplitude, between "a wide margin of appreciation", "a certain margin of appreciation" and "a margin of appreciation". In the matter of electoral rights, the Court assigns to the national authorities the supreme rank in the spread and depth of the discretion allowed.

3.2 In practice, over many years, the Court has, so far at least, always put in practice its theorem that national authorities are better placed than an international court to establish how electoral democracy and the demands of pluralism are best served in the specific light of the current political, historical and social conditions of each particular country. It is only in the most exceptional circumstances that the Court has unsheathed its supervisory powers to second-guess the local authorities in the area of restrictions on the right to vote and to stand for election. Virtually all the limitations prescribed by the national systems have, so far, passed the test of the Strasbourg organs. All, that is, except the Latvian one.

3.3 I believe that it was never for the Court to determine such subjective and elusive questions as the one whether in 1998 the transitional period to a new democracy had been fully played out or otherwise. The majority lays considerable emphasis on the fact that the measure complained of might have been justified in a transitional period, but not in 1998, when the adjustment period was over. I fail to see how an international Court is better placed to impose its own value judgements on such evanescent and ephemeral issues as to exactly when a state of emergency or transition is over, rather than the democratic sensors of the national authorities, in everyday, and far more intimate, contact with the realities of Latvian history. In the absence of objectively identifiable criteria (such as Latvia's entry into NATO and the European Union in 2004) the Court should have considered the determination of when a transition period comes to an end, to fall squarely within the national margin of appreciation.

3.4. Again, I fail to see why the respondent Government should have been penalised by the Court precisely because it exacted less than the full pound of flesh from the applicant. Any State, in the wake of a violent coup discoloured in blood, would have been justified in instituting criminal proceedings against those perceived to have been associated with an armed attempt to overthrow the democratic order. Had the applicant been found guilty in criminal proceedings, loss of election rights would have followed automatically. The Latvian authorities, (whether in a spirit of reconciliation, or for reasons of the fragility of the power structures is as unclear as it is irrelevant) spared the applicant severe criminal prosecution and instead

[1] *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23, § 52; *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, pp. 1233-1234, § 39; *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV; *Podkolzina v. Latvia*, 46726/99, 9 April 2002, § 33, ECHR 2002-II; *Selim Sadak and Others v. Turkey,* nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, § 31, ECHR 2002-IV, and *Hirst v. the United Kingdom (no. 2)*, no. 74025/01, § 36, judgment of 30 March 2004.

favoured her with the far softer option of a penalty based on fully adversarial civil-law proceedings. The Court would not, presumably, have objected to a criminal sentence coupled with loss of electoral rights. It is, in my view, paradoxical that, for having spared the applicant the trauma of criminal penalties, Latvia then finds itself unable to discipline the applicant at all.

3.5 In the present case, the national authorities were driven by a manifest concern to safeguard the image and credibility of democracy; they feared that, by allowing militant non-democrats to stand for election shoulder to shoulder with those who, for the fulfilment of democracy, had been prepared to pay the ultimate cost, would destabilise the very moral authority of democracy itself, and obfuscate the unequivocal inspiration the image of pluralism should evoke. It is far from painless for me to see that it was only in the present case that the Court, in substance, abandoned its doctrine of "wide margin of appreciation", to substitute a text-book political and historical credo for that of a State that had lost democracy through the proficiency of the likes of the applicant, regained it notwithstanding the impenitent struggles of the likes of the applicant, and retains it despite the cravings of the likes of the applicant.

Loss of electoral rights according to the Court

4.1 The Court has always accepted that the political rights implicit in Article 3 of Protocol No 1, i.e., to vote and to stand for election, are not absolute and may be restricted, provided the limitations do not impair the very essence of the right, are imposed in the pursuit of a legitimate aim, and that the means employed in curtailing those rights are not disproportionate.[1]

4.2 In the furtherance of this now sacrosanct doctrine, the Strasbourg organs have, at least so far, accepted as legitimate the widest spectrum of limitations on the right to vote and to stand for elections devised by the national authorities of various member states.

4.3 Thus, limitations on these political rights based on residence have repeatedly passed the Strasbourg test [2]– even when the disenfranchisement was based on a "four years continuous residence" requirement.[3] The inability to exercise political rights due to nationality or citizenship requirements[4], or consequent on double nationality[5], has also been approved by Strasbourg. Age limitations in general[6], including a minimum age of forty to stand as candidate for the Belgian senate[7] have been accepted, as

[1] *Mathieu-Mohin and Clerfayt v. Belgium*, cited above, pp. 22 – 23.
[2] *Alliance des Belges v. Belgium*, no. 8612/79, Commission decision of 10 May 1979, Decision and Reports (DR) 15, p. 259.
[3] *Polacco, Garofalo v. Italy*, no. 23450/94, Commission decision of 15 September 1997, (DR) 90, p. 5.
[4] *Luksch v. Italy*, no. 27614/95, Commission decision of 21 May 1997, (DR) 89, p. 76.
[5] *Ganscher v. Belgium*, no. 28858/95, Commission decision of 21 November 1996, (DR) 87, p. 130.
[6] *W,X,Y and Z v. Belgium,* nos. 6745/74 and 6746/74, Yearbook XVIII (1975) p, 236.

also the ban on standing for election if the candidate is already a member of parliament of another state[1]. Language proficiency was also found to be a sufficient reason to qualify or disqualify a person from standing for election[2]; similarly, regulations that made the right to stand as candidate dependent on a requirement to take the oath of office in a particular language.[3] The disenfranchisement of persons in detention[4] , of persons previously convicted of serious crimes[5] , also obtained the Strasbourg seal of approval.

4.4 Very recently the Court, in an exceptional manner, struck down the loss of political rights imposed by U.K. law on all those serving a prison sentence. But this solely because the ban hit indiscriminately all those convicted, whether of a serious or of a petty offence, whether condemned to minimal terms or to life sentences. It was only the indiscriminate blanket effect of the ban that caused the Court to find a violation.[6]

4.5 To date, limitations on political rights to vote or to stand for election, not aimed in any way at securing the survival or the authority of the democratic principle, have received the blessing of the Strasbourg organs. It is disconcerting to discover that it was only a restriction inspired by a concern to foster the moral image of democracy that today failed the Strasbourg test.

4.6 It is perfectly acceptable, it seems, that a person with an inadequate knowledge of a particular language should be denied the right to stand for election – though that candidature would create absolutely no distress for democracy. It is not, on the other hand, acceptable, that a person who has spent a lifetime living and imposing dogmas of anti-democracy, be restricted in reaping a few of the benefits of that democracy which, had it been left to her, would have receded to an indifferent footnote of history.

4.7 The Court has been generous to those whose rapport with democracy was and is wholly dysfunctional, and has been severe in its punishment of those who tried to shield it from the bane of self-satisfied and entrenched non-democrats.

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[7] *Ibid.*

[1] *M v. UK*, no. 10316/83, Commission decision of 7 March 1984, (DR) p. 129.

[2] *Clerfayt et Al v. Belgium*, no. 27120/95, Commission decision of 8 September 1997, (DR) 90, p. 35.

[3] *Fryske Nasjonale Partij and Others v. the Netherlands*, no. 11100/84, Commission decision of 12 December 1985, (DR) 45, p. 240.

[4] *Holland v. Ireland*, no. 24827/94, Commission decision of 14 April 1998, (DR) 93, p. 15.

[5] *H v. Netherlands*, no. 9914/82, Commission decision of 4 July 1983, (DR) 33, p. 242.

[6] *Hirst v. the United Kingdom (no. 2)*, cited above.

DISSENTING OPINION OF JUDGE LEVITS

I.

1. To my regret I cannot agree in this case with the findings and particularly with the reasoning of the majority of my colleagues.

2. I completely share the objections of Judge Bonello expressed in his dissenting opinion in respect to the margin of appreciation left to the Contracting states regarding electoral laws including reasons for disqualification of candidates.

3. Indeed the Strasbourg organs had left to the Contracting States in those matters the widest possible margin of appreciation. In the following I would like to explain why, in my view, this case should also be covered by the margin of appreciation.

II.

4. All democracies are based on the same common values and main principles. However, the legal shape of these values and principles in the constitutional order is different from state to state. Therefore we can speak about a pluralism of the modern democratic constitutional orders.

The pluralism of democratic constitutional orders applies also to the electoral systems as a part of the constitutional order of a democratic state. Electoral systems are also different from state to state, but all of them are democratic, if they obey certain principles which are essential for democratic elections.

5. With regard to electoral rights as a central element of the constitutional order of a democratic state we can say that there is a common universal principle on which these rights are based. It is the principle according to which the majority of the people have both active and passive electoral rights. Compliance with this principle could be regarded as the central issue in the assessment whether an electoral system should be recognised as democratic.

6. Nevertheless, this principle is never applied without exceptions. Indeed, national constitutional orders contain democratic electoral rights, but at the same time they ban some people from exercising these rights. Thus, we can say that this ban is an exception from the general rule.

7. Concerning some types of disenfranchisement, there is a uniform approach amongst the democratic states. All theses states ban from elections persons of unsound mind and minors. The exclusion of both groups is regarded as natural so that this is never seen as a problem.[1]

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[1] It is interesting to mention that on 11 September 2003, forty-six members of all factions of the German Parliament submitted a bill proposing to revise the exclusion of minors from electoral rights and to grant these rights to all citizens from the very moment of birth (these rights could be exercised by the parents). This proposal, rather surprising at first sight,

8. Besides minors, another large group of the population is normally excluded from elections – aliens, including those born in the country or long-standing residents. This is a natural consequence of the concept of a national democratic state.

Nevertheless, even here, there is no absolutely uniform state practice. In some Member States of the Council of Europe the disenfranchisement of foreigners was lifted and this large group has been granted electoral rights under certain conditions and mainly at a local level (Ireland as early as in 1963; it was followed by Sweden, Norway, the Netherlands, Denmark, and Finland; United Kingdom lifted the exclusion of the citizens of the Commonwealth states for all elected posts – including the national Parliament).

On the contrary, in 1990, in an extensively reasoned judgment, the German Constitutional Court held that lifting the disenfranchisement of foreigners would constitute a violation of the very essence of the principle of democracy and national sovereignty[1].

9. In many Contracting States, a person loses his/her electoral rights after a conviction by a criminal court. For example, in Austria and in Germany, people sentenced to more than one year's imprisonment are banned from elections. In Ireland, such legal consequences are entailed by a sentence to more than six months' imprisonment, whereas in Belgium four months' imprisonment suffices. In the United Kingdom, a person sentenced to any kind of imprisonment is disenfranchised.[2]

On the contrary, in Sweden convicted persons are not disenfranchised at all. In a judgment of 5 March 2003 the Latvian Constitutional Court also found that a Latvian legal provision banning sentenced persons from elections contradicted the principle of free elections.

10. It is also to be noted that some civil misbehaviour may be held as a sufficient reason for disenfranchisement. For instance, in the United Kingdom and in Ireland, a person declared to be bankrupt is excluded from electoral rights. Obviously, the national legislator wanted to protect the institution of Parliament from persons who, in the eyes of society, do not have the necessary credibility to exercise these rights.

11. The constitutional orders of different democratic states provide for a deprivation of active and/or passive electoral rights also for some other reasons, which vary from state to state, for example, the residence of a citizen abroad can be a ground for his/her disenfranchisement. Furthermore,

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shows that even such a traditionally recognised ground for exclusion from electoral rights might be subject to different opinions amongst democratic political forces.

[1] *BVerfgE* 83, 37 et seq., 60.

some Contracting States ban from elections different categories of state servants (e.g., Greece, Spain, Ireland, Portugal, and Finland).

12. In conclusion, the constitutional orders of all democratic states contain electoral rights, based on the general principle *that the majority of the people possess these rights*. At the same time, all constitutional orders provide also for some grounds for exclusion from these rights.

13. The Court has recognised that the rights in Article 3 of Protocol No. 1 are not unlimited, that, by analogy with Articles 8 to 11 of the Convention, there is room for implied limitations. The States have a wide margin of appreciation in this area, but it is for the Court to determine in the last resort whether the requirements of Article 3 of the First have been complied with.[1] Thus, the rights concerned can be restricted by law, but the restrictions must pursue a legitimate aim, and the restriction must be proportionate.[2]

III.

14. In order to understand the legal character of electoral rights, it is important to emphasise that they are personal *political* rights which are a part of the institutional order of the State.

Therefore, the functions of electoral rights are different from that of human rights. The functions of these rights are to ensure the democratic participation of the people in the governing of the state and to legitimate state institutions, whereas the functions of human rights are to protect the personal freedom of individuals from state interference and, furthermore, to guarantee some material or immaterial benefits.

In other words, electoral rights are an instrument in the hands of an individual to influence the state policy, whereas human rights are a legal "shield" conferred on an individual against state interference in his/her freedom, and in some situations it is also a legal ground to demand from the state some benefit for himself or herself.

15. Consequently, in the national constitutional orders, and because of their different legal character, electoral rights are never regarded as human (basic, fundamental) rights but rather as political rights belonging to the institutional part of the constitutional order.

Therefore the legal scope of these rights, their interpretation and their application in practice follow different rules from those governing human rights.

16. Article 3 of Protocol No. 1 is the only Convention provision which makes electoral rights individual human rights. That cannot eliminate the specific character of electoral rights as political rights, but lends them a

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[1] Cf. *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II.

[2] Cf. *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23, § 52, as well as *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports* 1997-IV, pp. 1233-1234, § 39.

double character: they are at one and the same time human rights (in the Convention system) and political rights.[1]

17. When examining applications under Article 3 of Protocol No. 1, the Court always faces a certain dilemma: on the one hand, of course, it is the Court's task to protect the electoral rights of individuals; but, on the other hand, it should not overstep the limits of its explicit and implicit legitimacy and try to rule instead of the people on the constitutional order which this people creates for itself.

This dilemma is unique problem within the Convention system, because only the rights in Article 3 of Protocol No. 1 have this double legal character as human rights and an important element of national constitutional order.

18. The appropriate way out of this dilemma is to use the instrument of *margin of appreciation*. That means that in examining the legitimate aim and the proportionality of a restriction, it is necessary to give a different weight to these two elements: if the Court finds that the restrictions pursue a legitimate aim and are not arbitrary, then only in exceptional situations can this restriction be found disproportionate.

Therefore, the Court should not disregard the specific character of Article 3 of Protocol No. 1. The Court should be aware of the fact that through its adjudication on matters arising under Article 3, it can unduly influence the national constitutional order of a Contracting State. In other words, *the Court is not empowered by the Convention system to interfere directly in the democratic constitutional order of a State*. Otherwise, there would be a violation of the principles of democracy and State sovereignty. A too simplistic approach to the examination of this Article can easily lead to a violation of both these principles.

19. It seems that the Court and the former Commission were indeed aware of the special character of Article 3 of Protocol No. 1. As the case-law shows, the general policy of the Strasbourg organs was to leave to the Contracting states the widest possible margin of appreciation in order to avoid a challenge to the principles of democracy and state sovereignty.[2]

In fact all the abovementioned restrictions provided for in electoral law, in the constitutional orders of the different Contracting States, have been found by the Strasbourg organs to be compatible with Article 3 of Protocol No. 1. Only in a few exceptional situations, when the very core of the electoral rights was at stake, [3] has the Court has found a violation.

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[1] Cf. Mark E. VILLIGER, *Handbuch der Europäischen Menschenrechtskonvention*, 2. Aufl., Zürich 1999, Rdnr. 649.

[2] See the references in the dissenting opinion of Judge Bonello.

[3] E.g., *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I.

IV.

20. The finding of the majority, that the restrictions in the instant case pursued legitimate aims (§ 86 of the judgment), should in my view already indicate, that these restrictions were proportionate.

However, afterwards the majority applied the margin of appreciation in very narrow manner and consequently found the restrictions to be disproportionate.

I cannot share this view. On the contrary, in my view, the public interests in the instant case justified allowing to the respondent State and even wider margin of appreciation than in an "average" case under Article 3 of Protocol No. 1.

21. The majority recognise that the provision of Latvian law which disenfranchises those who continued to participate actively in certain organisations after 13 January 1991 pursues legitimate aims – to protect the independence of the Latvian state, its democracy and national security (§ 86 of the judgment). Furthermore, the majority also recognise that restrictions were proportionate during the first years after the re-establishment of an independent democratic state (§ 92 of the judgment).

But then the majority analyse the current situation, and come to the conclusion that the applicant poses no more threat to the "legitimate aims" protected through the restrictions concerned (§§ 92-99 of the judgment).

22. I can agree with majority that in the current situation the applicant is no longer a real danger to the State and democracy, if the word "danger" is taken to mean only the preparation of a new "coup d'état" like those which happened twice in 1991. I would like to point out that only a mass defence of the Latvian Parliament and Government by mainly unarmed people (the so-called "barricades of Riga") thwarted these attempts.

23. The Court should always be aware of the context of a case, especially in a politically sensitive and complex case like this one.

The first aspect of the general context of the instant case, which should be taken into account, is that of the re-establishing of a democratic order after an undemocratic (totalitarian) regime.[1] Most of the "old" Contracting States do not have any real experience in that. The second aspect is that of the re-establishing of an illegally occupied State. That means liquidating an illegal situation caused by a foreign state in continuous breach of international law.[2]

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[1] Cf, e.g., Huan J. LINZ and Alfred STEPAN, Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe, Baltimore, 1996, and Chris MÖGELIN, Die Transformation von Unrechtsstaaten in demokratische Rechtsstaaten, Berlin, 2003.

[2] On the situation of the occupied Baltic States under international law, cf., e.g., William J.H. HOUGH, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory." In: New York Law School Journal of International & Comparative Law, 1985, No.2, pp.301-533, and Dietrich A. LOEBER, "Legal Consequences of the Molotov-Ribbentrop Pact for the Baltic States: on the

The majority formally recognise, though in general terms, the difficult context in which this case is embedded (§§ 90-92 of the judgment). Nevertheless, when analysing the details of the case the majority seem to have lost, sight of its true significance.

24. One of the most important problems for the new democracies is the confidence of people in their institutions. However, general confidence in the democratic institutions is a *conditio sine qua non* for a stable democracy.

Indeed, people have experienced a system of injustice (*Unrechtsstaat*), and that makes it difficult for them to recognise the good intentions of democratic politics and institutions. Distance from of the state institutions and distrust of politicians is a usual and in a sense "normal" pattern of society in new democracies, especially when the "revolution" is over and the democratic routine starts.

25. In the context of this case it is important to note that building confidence in the new democratic institutions is considerably impeded if the new institutions (governmental bodies, public authorities, parliament, etc.) are permeated by protagonists or former representatives of the old regime of injustice – despite the fact that they might still have support in some parts of the society.

26. All these are elements of the general problem of "coping with the past" (*Vergangenheitsbewältigung*) which all the new democracies are facing.

Society and the State must find the right way to deal with injustices of the former regime: how to compensate the victims, how to treat the protagonists of the previous system of injustice, how to show to individual members of the society the qualitative difference between a system of injustice and a democratic system guided by the rule of law.

27. There is little help from the traditional "old" democracies in this respect, whether in the fields of (legal) theory or practice. Their advice is rather superficial. These questions were not relevant to them.[1]

Therefore it is rather for the new democracies themselves to develop the right solution to these problems both in legal and political theory and in practice.

28. The scale of possible attitudes to these problems in the new democracies is very wide and differs from state to state. It depends on many factors like the relative strength of the democratic forces and the protagonists of the regime of injustice; the particularities of the democratic revolution; the degree to which of the new elite is intermixed with the

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Obligation to Overcome the Problems Inherited from the Past." In: Baltic Yearbook of International Law, Vol. 1, 2001.

[1] Germany was in a particular situation both after the end of the Nazi regime, in 1945, and after the end of the East German Communist regime, in 1989. The resulting intense concentration on these problems gave strong impulses to both the (legal) theory and practice of current new democracies not only in Europe, but also elsewhere. Therefore legal terms like "*Unrechtsstaat*" and "*Vergangenheitsbewältigung*" became accepted in the legal terminology of some other languages.

protagonists or former representatives of the old regime; the historical experiences, and similar circumstances.

In some states there has been a formal criminal prosecution of the representatives of the former regime who committed crimes. Nevertheless, the principle of *nulla poena sine lege* prohibits the prosecution in most cases; therefore the criminal activities of former state officials may remain without a just criminal punishment.[1]

South Africa, Argentina and some other states in Latin America have established "truth commissions" as an instrument of the policy of the "coping with the past".[2]

29. In several new democratic states the laws provide preventing some restrictions for the former representatives and protagonists of the old system of injustice from holding some official posts, especially in the civil service.

For example, in Germany, the law provides preventing certain restrictions for the former agents of the secret service of the East German regime ("*Stasi*") from holding a parliamentary office.

This law has also been applied in practice. For example, on 29 April 1999, a member of the Parliament ("*Landtag*") of Thüringen (a German "*Land*") was deprived of his seat after it was revealed that he had been an agent of the secret service under the old regime.[3] In the context of this case, it should be noted that, as in Latvia, it was not necessary to prove the individual guilt of the former agent – it was enough to prove that a parliamentarian had indeed been an agent of the secret service.

Again, as in Latvia, it was not necessary to examine whether he or she still presented an actual danger to the democratic order. The reason for this exclusion was the general assumption that such a person *discredits the Parliament*.

The purpose of such restrictions for members of Parliament has also been explained by the German Federal Constitutional Court in a case concerning the regulations for the special procedure for investigation whether deputies of the Federal Parliament formerly acted as agents of the "*Stasi*". The Federal Constitutional Court ruled that the reason for this investigation was the assumption, *"that the former activities of a deputy as an agent of the state security [of the former GDR] deprives him or her of the legitimacy needed to be a deputy of the German Bundestag. This regulation does not*

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[1] However, the Court has accepted the criminal persecution of the representatives of the old regime if they committed crimes which were formally prohibited (but never prosecuted under the old regime), see *Streletz, Kessler and Krenz v. Germany*, see also my concurring opinion in this case. Cf. also: Jens KREUTER, *Staatskriminalität und die Grenzen des Strafrechts*, 1997.

[2] See Truth Commissions: A comparative assessment, 1996.

[3] *Das Parlament*, 1999, No. 17. However, this law of the Land of Thüringen was later declared unconstitutional because of the formal grounds that these matters should be regulated by a constitutional law, and not by an ordinary law as in Thüringen, cf. *Thueringer Verfassungsgerichtshof*, jz of 25 May 2000.

question his or her honour as a personal right deserting legal protection, but [rather] his or her suitability to represent the people in Parliament".[1]

30. It should also be noted that in some new democracies there is no specific policy of "coping with the past", and the discussion on these questions has not yet begin. In other countries, such discussion only starts after a certain period of time, when the democratic culture and the legal consciousness attain a certain level and when there is no more fear that the old forces may come back. For example, the discussion about such problems in Argentina and Chile started and measures against the representatives of the former authoritarian regimes were taken only recently, nearly two decades after the establishing of the democratic order.

Therefore the implicit expectation of the majority in the instant case that these problems would continuously diminish without any discussions and any specific policy (§§ 92 and 97 of the judgment), is unrealistic, at least as long as the whole generation of victims of the former Soviet system of injustice is still alive.

31. The variety of different attitudes towards the complex problem of "coping with the past" allows only one conclusion – there cannot be a uniform approach.

Only an intensive discussion in society and an organised State policy aimed at redressing the injustice of the former system and strengthening the people's confidence in democratic institutions (which may also include some restrictions on the protagonists of the former regime), can, in the long term, lead to a reconciliation in society and contribute to the stabilisation of the democratic order. It should also be mentioned that the reconciliation process requires some remorse on the part of the protagonists of the former regime for having committed injustice (which, as my colleague Judge Bonello notes in his dissenting opinion, is not the case with the applicant).

Anyway, it is a genuine *political* process in each country, which should not be distorted by simplistic judicial verdicts.

32. In Latvian society, the discussion on whether these restrictions are (still) necessary, is continuing. The Constitutional Court's judgment of 30 August 2000, accompanied by a strong dissenting opinion of three judges, reflects this discussion. It should also be mentioned that, after very long and intensive discussions, the Latvian Parliament decided to lift these restrictions for the elections to the European Parliament in 2004.

33. In my view, the Court should respect the deeply *political* character of this problem, instead of substituting itself for society and delivering a *judicial* decision on this issue. This will neither bring the discussion to an end nor solve the problem. In any case, some restrictions on the passive electoral rights of protagonists of the old regime of injustice are not disproportionate in comparison to the aims of these restrictions, especially strengthening confidence in the new democratic institutions. These restrictions are covered by the concept of the "self-defending democracy",

[1] Decision of 21 May 1996, *BVerfgE* 94,351 et seq.

which is also recognised in the settled case-law of the Court and to which the majority (also refer) in the instant case (§ 92 of the judgment).

V.

34. The majority departed from the general principles, developed by the case-law of the Strasbourg organs in cases where persons were disenfranchised for "uncitizenlike conduct", without having reasonable grounds for that change.

In my opinion, one of the weakest points of the reasoning adopted by the majority is the second part of § 88, in which the Court tries to draw a distinction between the present case and the case-law of the former Commission concerning the electoral rights of persons convicted in the aftermath of the World War II for collaboration with the enemy or similar uncitizenlike conduct during the war. In particular, in § 84 of the judgment, the Court quotes three decisions that are worth examining more thoroughly.

35. In the case of *X. v. the Netherlands*[1], the applicant, born in 1888, was convicted for "uncitizenlike conduct" by the Amsterdam Special Court in 1948. The applicant never participated in armed conflict against the legitimate Dutch authorities, nor did he take active part in any repressive mechanism set up by the Nazi occupation force. He was essentially blamed for having adopted a disloyal attitude, before and during the war, being officially the director of the Dutch Christian Press Bureau and unofficially a member of the Dutch National-Socialist Movement and a strong sympathiser with the Third Reich. Nevertheless, the Dutch authorities considered his fault to be sufficiently grave to deprive him for life of his right to vote. The Commission examined his application in 1974 – that is to say almost thirty years after the events – and declared it manifestly ill-founded in the following terms:

> "[I]t does not follow that Article 3 accords the rights unreservedly to every single individual to take part in elections. It is indeed generally recognised that certain limited groups of individuals may be disqualified from voting, provided that this disqualification is not arbitrary.
>
> [T]he Commission has still the task of considering whether the present deprivation of the right to vote is arbitrary and, in particular, whether it could affect the expression of free opinion of the people in the choice of the legislature. This is clearly not so in the present case.
>
> (...)
>
> [As regards Article 14 of the Convention, t]he Commission (...) finds it appropriate to refer to the jurisprudence of the European Court of Human Rights (judgment of 23 July 1968 – in the case "relating to certain aspects of the laws on the use of languages in Education in Belgium") which laid down criteria for consideration of differences in treatment: objective and reasonable justification of a measure and reasonable

[1] No. 6573/74, Commission decision of 19 December 1974, DR 1, p. 87.

relationship of proportionality between the means employed and the aim sought to be realised.

The Commission has analysed the intention of the laws depriving, in several countries, convicted disloyal citizens of certain political rights, including the right to vote. The purpose of such laws is to prevent persons, who have grossly misused in wartime their right to participate in public life, from misusing their political rights in the future. Crimes against public safety or against the foundations of a democratic society should thus be avoided by such measures.

The Commission considers that this *ratio legis* meets the criteria laid down by the Court in the above mentioned judgment."

36. The second decision was adopted in the case of *X v. Belgium*[1]. In February 1948 the applicant, born in 1912, was convicted by the Brussels Military Court and sentenced to twenty years of extraordinary detention for collaboration with the enemy during the war. In February 1951 his prison term was reduced to eighteen years, and several months later he was conditionally released. However, his conviction initiated the automatic application of a legal provision depriving him permanently of the right to vote in national and local elections. In 1979, the Commission rejected his complaint in the following terms:

"[The] right [to vote], which is neither absolute nor unlimited, is subject to certain restrictions imposed by the Contracting Parties, provided that these restrictions are not arbitrary and do not interfere with the free expression of the people's opinion (...).

When required to decide on cases of this kind, the Commission must decide whether or not this negative condition is fulfilled. In other words, it must decide, in the present instance, whether the permanent deprivation of the right to vote following conviction for treason, of which the applicant complains, is arbitrary, and, in particular, whether it is calculated to prejudice the free expression of the opinion of the people in the choice of the legislature. The Commission is of the opinion that this is certainly not the case in the present instance.

In fact, it notes that in Belgium, as in other countries, the purpose of legislation depriving persons convicted of treason of certain political rights and, more specifically, the right to vote is to ensure that persons who have seriously abused, in wartime, their right to participate in the public life of their country are prevented in the future from abusing their political rights in a manner prejudicial to the security of the state or the foundations of a democratic society (...)."

37. One might argue that the two aforementioned cases relate to a period prior to the judgment in the case of *Mathieu-Mohin and Clerfayt v. Belgium*, the first judgment that defined clearly and authoritatively the extent of the rights covered by Article 3.

However, the Convention organs did not change their approach even after *Mathieu-Mohin.* In the case of *Van Wambeke v. Belgium*[2], the applicant, a former member of the *Waffen SS* born in 1922, was sentenced to fifteen years of extraordinary detention for treason by a judgment of the

[1] No. 8701/79, Commission decision of 3 December 1979, DR 18, p. 250.
[2] No. 16695/90, Commission decision of 12 April 1991.

Ghent Military Court of 9 May 1945; he also lost his voting rights for life. In 1989 – that is almost forty-five years after the events – he was denied the right to vote in elections to the European Parliament. In 1991 the Commission rejected his application, reiterating the reasoning of the *X v. Belgium* decision quoted above.

38. I would like to place special emphasis on the fact that in all these cases, the right at stake was the active electoral right, the right to vote, that requires less qualification and much less responsibility than the right to stand for elections.

Generally speaking, the vast majority of the domestic Constitutions or electoral laws of the Contracting States to the Convention set up different criteria for active and passive electoral rights, the latter being subordinated to considerably higher standards than the former – thus there always is a category of persons who may vote but are not entitled to stand for election because of various impediments that disqualify them in terms of the domestic law (age, criminal record, bankruptcy, etc.). Such a distinction is only natural, if we think of the remarkable difference between the degree of accountability required from a citizen for a simple participation in the suffrage, and the degree of accountability that a legislator has to bear. And still, the Commission found three times that a perpetual restriction of this basic civic right was compatible with Article 3 of Protocol No. 1.

39. Now, coming back to the present case, I have considerable difficulty understanding how the majority, after having quoted the above decisions, could find a fundamental difference between them and the present case. The only argument, mentioned by the Court at the very end of § 88 of the judgment, is that the three former applicants had been convicted for very serious crimes, namely treason, whereas the applicant was never tried nor convicted.

This argument does not convince me at all. In fact, if we submitted those three cases to the same type of analysis that the Court applied in the present instance – though the very idea of such analysis seems to me to be wrong – I am sure that the domestic measures would not stand the test and the Court should indubitably find a violation of Article 3 of Protocol No. 1.

40. I could accept the decision of the majority to operate a dichotomy between the *punitive* and the *preventive* aspects of the applicant's ineligibility (§ 87 of the judgment); however, it remains surprising to me why the present case has not been compared with *X v. the Netherlands*, *X v. Belgium* and *Van Wambeke v. Belgium* also under the *preventive* angle. If we follow this line, we will find that the first of these three applicants had been convicted for a non-violent crime implying merely ideological support for the occupation power – even though the Commission did not find any difference between him and the two others; that none of the applicants had ever been accused of having done something wrong for the many years after their conviction, and that the respective Governments had never blamed them for any disloyal conduct at the time of the introduction of their applications.

41. Certainly, one can insist on the fact that, unlike the applicant in the instant case, they all had been criminally convicted. However, we should remember that the time elapsed since their conviction was more than impressive: twenty-six years in the first case (*X v. the Netherlands*), thirty-one years for the second case (*X. v. Belgium*) and forty-six years in the third case (*Van Wambeke v. Belgium*).

It means that at least one generation had changed before the Commission came to examine the respective complaints, whereas in the present instance, the controversial events of 1991 still fresh in the memory of the Latvian people. In my opinion, this fact suffices to outweigh the aforementioned difference.

42. Finally, as to the "actual dangerousness" criterion set up by the majority, we should recall that on the date of the respective Commission decisions, the first applicant was eighty-six years old, the two others being aged sixty-seven and sixty-nine.

This being said, if we rigorously apply the criteria set up by the present judgment, the three former collaborators and traitors appear to be much more inoffensive at the moment when the Commission examined their cases than the applicant in the instant case is today. And still the Commission found no appearance of a violation of Article 3 of Protocol No. 1.

43. As I already said, in my view, the Commission followed the most reasonable way by basing its reasoning not on the *actual dangerousness* of the applicants – a criterion that the national authorities are in a better position to evaluate – but on the question whether they were *qualified* to take part in the suffrage.

Here I would like to emphasise once more that the applicant in the present case was subject to the mildest and most lenient form of interference with Convention rights – she has been deprived only of the right to be elected; on the contrary, she can vote and even chair a political party without any restrictions.

44. Of course, the Court is bound neither by the former Commission's case-law nor by its own, and is free to reverse it at any moment. However, if the present judgment is to be considered such a reversal, it should have adopted a much more thorough and complete reasoning; in my eyes, one tiny argument at the end of § 88 is clearly insufficient.

45. As for myself, I remain convinced that in cases similar to the present instance and involving delicate considerations based on the painful political and historical experience of the country concerned, the Court must exercise the maximum self-restraint, reducing its control to two basic points: it should ensure, firstly, that the reasons given by the national authorities are serious and consistent and secondly, that there is no appearance of arbitrariness in the case.

VI.

46. Furthermore, I would like to mention some of the majority's findings of fact that seem to me to be hardly appropriate.

Firstly, the majority notes that the organisations in which the applicant actively participated were not prohibited immediately after the first attempted of "coup d'état" in 13 January 1991, but only on 23 August 1991 after the failure of the second "coup d'état". The majority concludes that during this period the organisations were not illegal (§ 90 of the judgment).

However, a formal prohibition is a *political* decision. The Government decided not to act this way because of the presence of foreign military forces which were still in the country, closely collaborating with the Communist party and other antidemocratic organisations, to which the applicant belonged. The purely formalistic approach of the majority, qualifying an organisation which organised a "coup d'état" as "legal", ignores the real situation: a formal prohibition would destabilise the situation to the detriment of the new born democracy. This approach seems to me to be out of touch with the reality.

47. Secondly, the majority are of the opinion that the power of the national courts to assess the actual dangerousness of a concerned person is limited (§ 93 of the judgment).

This is true. However, the main purpose of the restrictions set up by Latvian law is to protect the Parliament from persons who have *discredited themselves* by their active participation in organisations which really attempted to overthrow the democratic order and to restore the former system of injustice – even if they still have some support in some parts of society. I have already explained that this might be necessary in specific situations for new democracies to be able to strengthen the confidence of the majority of the people in the democratic institutions, including the Parliament.

48. Thirdly, the majority also found a violation of Article 11 of the Convention (§ 111 of the judgment). I cannot follow the majority for the same reasons as for Article 3 of Protocol No. 1. I am of the opinion that the same considerations justifying the recognition of a wide margin of appreciation to the Contracting States apply to Article 11 of the Convention.

49. Fourthly, the majority decided to award to the applicant for pecuniary damage LVL 2,236.50 for the time when she was deprived of her seat on Riga City Council. In my view, this sum is not substantiated. The applicant could have suffered a pecuniary damage only if she had not any other earnings which would fully or partially compensate for the loss of her income from the city council (for example, unemployment benefits or salary from other employment instead of the lost income from of the city council). In the instant case the applicant did not submit any information on that.

50. One last remark in order to avoid any misunderstanding: I have not argued in favour of the restrictions in question, which are provided for by

Latvian law. I only wanted to show that this is a genuine political question, which is important for the society of a new democracy, and which should be decided in the democratic political process within the country. I also wanted to draw attention to the problem of the Court's *judicial self-restraint* in genuinely political matters. I think that in such cases the Court should be extremely careful, try to remain on the solid ground of judicial assessment, and not advance on to political ground, the latter being reserved for the democratic institutions of the Contracting States. That is why I have called for the application of a wide margin of appreciation.