



Membership of the Soviet Communist Party legitimate grounds to stop MEP standing for Latvian Parliament

In today's **Chamber** judgment¹ in the case of [Ždanoka v. Latvia \(no. 2\)](#) (application no. 42221/18) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights.

The case concerned the removal of Ms Ždanoka, a former MEP, from the candidate list for the 2018 parliamentary elections, owing to her active membership of the Communist Party of Latvia during the post-independence struggles against the Soviet Union. She had been a candidate for the Latvian Union of Russians.

The Court found in particular that restricting from standing for election individuals who had endangered and continued to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law was legitimate and proportionate. The authorities had therefore acted within their discretion ("margin of appreciation") in doing so in Ms Ždanoka's case.

Principal facts

The applicant, Tatjana Ždanoka, is a Latvian national who was born in 1950 and lives in Riga. She is a former member of the European Parliament (MEP).

In 1971 Ms Ždanoka joined the Communist Party of Latvia, the regional branch of the Communist Party of the Soviet Union. She rose to hold positions such as member of the Supreme Council of the Latvian Soviet Socialist Republic and member of the Central Committee for Supervision and Audit of the regional party branch.

On 21 August 1991, following events including attempted Soviet-backed coups in Latvia and Soviet military action in Lithuania, Latvia restored its independence. The Communist Part of Latvia was outlawed two days later.

In 1998 and 2002 Ms Ždanoka was not allowed to stand in parliamentary elections on the basis of section 5(6) of the Parliamentary Elections Act 1995, which prevents individuals who had "actively participated" in the CPSU (the CPL) after 13 January 1991 from standing as candidates or being elected to the *Saeima* (the national parliament). Following an application to the European Court by Ms Ždanoka, the Grand Chamber of the Court held that in 2006 that restriction was neither arbitrary nor disproportionate, finding no violation in its [Ždanoka v. Latvia](#) (no. 58278/00) judgment.

There are no equivalent restrictions for election to the European Parliament. Ms Ždanoka was an MEP from 2004-24.

In June 2006 the Latvian Constitutional Court reaffirmed the constitutionality of the ban on standing for parliamentary elections, but held that a similar restriction for former KGB agents was

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

disproportionate in respect of one individual. In 2017 Ms Ždanoka sought a review of the compatibility of section 5(6) of the Parliamentary Elections Act with the Constitution. The Constitutional Court found the provision constitutional on 29 June 2018. It stated, among other things that “the aim of the ... provision is to protect the democratic State order, national security and the territorial unity of Latvia. The ... provision targets persons who have actively attempted to undermine the democratic State order and, in so doing, have rejected Article 1 of the Constitution” and narrowed the allowed reasons for a bar to “[having] endangered and still continu[ing] to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law”.

In 2018 Ms Ždanoka was on the Vidzeme constituency list for the Latvian Union of Russians party (*Latvijas Krievu savienība*). The Central Electoral Commission held that Ms Ždanoka had actively participated in the Latvian Communist Party after 13 January 1991 and continued to endanger the independence of the Latvian State and the principles of a democratic State governed by the rule of law, and struck her name off the list of candidates. She unsuccessfully appealed against that decision to the courts.

Complaints, procedure and composition of the Court

Relying on Articles 10 (freedom of expression), 11 (freedom of assembly and association), and 17 (prohibition of abuse of rights), and Article 3 of Protocol No. 1 (right to free elections), Ms Ždanoka complained, in particular, of her disqualification from standing for the *Saeima*.

The application was lodged with the European Court of Human Rights on 1 March 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Mattias **Guyomar** (France), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),
Stéphane **Pisani** (Luxembourg),

and also Victor **Soloveytschik**, *Section Registrar*.

Decision of the Court

Article 3 of Protocol No. 1

The Government did not dispute that Ms Ždanoka’s removal from the candidate list of her party, thus preventing her from standing for Parliament, amounted to an interference with her rights under Article 3 of Protocol No. 1. The relevant law – section 5(6) of the Parliamentary Elections Act – was sufficiently clear and was therefore foreseeable and lawful. The Court agreed with the Grand Chamber’s finding in *Ždanoka* that the objectives of the restriction – protection of the State’s independence, democratic order and national security – were legitimate.

In terms of the proportionality of the measure, the Court reiterated the Grand Chamber’s findings in *Ždanoka* that the main purpose of the restriction was not to punish, but to protect the integrity of the democratic process; that Ms Ždanoka’s recent conduct was irrelevant, what counted was her conduct during the struggle to maintain independence against Soviet threats; that she had made no attempts to distance herself from the anti-democratic position of the Soviet-era Communist Party of

Latvia; and that she had benefited from independent, adversarial proceedings in the examination of her case by the domestic authorities, but had failed to refute evidence weighing against her.

The Court also noted the current context in which Latvia is a neighbour of Russia, a State that had recently invaded and controlled parts of [Georgia](#) and [Ukraine](#). Noting the *Saeima's* rejection three times of proposals to lift the restriction, it stated that while in other circumstances the Court might consider this limited action as unjustified and capable of tipping the balance in favour of finding a violation, it could not reach such a conclusion in the specific and sensitive context of the present case, given that the “greater stability” enjoyed by Latvia (and Europe in general), referred to by the Grand Chamber in 2006, no longer existed. The restriction therefore had to be assessed in the light of the wide discretion afforded to Latvia in this matter. As it was on the basis of a high level of civic disloyalty and threat to protected values, it was neither arbitrary nor unreasonable.

Ms Ždanoka had not been barred from standing owing to a disagreement with the current Government, as she argued, and she had been able to actively participate in politics, including serving as an MEP.

The Court noted that the legal basis for the restriction in question had been narrowed down by the Constitutional Court in 2018 and applied accordingly by the Central Electoral Commission. It was satisfied that in disqualifying the applicant from standing for parliamentary election, the Latvian authorities had not overstepped their discretion (“margin of appreciation”) to decide on such matters. There had been no violation of Article 3 of Protocol No. 1 in this case.

Other articles

The Court reiterated that Article 3 of Protocol No. 1 (the *lex specialis*) overrides Articles 10 and 11 in this context. For Article 17 to be engaged, the complaints have to go beyond other breaches of the Convention, which was not the case here.

The Court held therefore that no separate examination of the complaints under these Articles was necessary.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.