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

FIFTH SECTION

DECISION

Application no. 24827/16
Dainis LIEPIŅŠ
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 31 March 2022 as a Committee composed of:

Ivana Jelić, *President,*
Mārtiņš Mits,
Kateřina Šimáčková, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 24827/16) against Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 April 2016 by a Latvian national, Mr Dainis Liepiņš, who was born in 1967 and lives in Ozolnieki ("the applicant") who was represented by Mr O. Cers, a lawyer practising in Riga;

the decision to give notice of the application to the Latvian Government ("the Government"), represented by their Agent, Ms K. Līce;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns a complaint about a statutory prohibition to carry out the duties of an elected member of parliament due to ongoing criminal proceedings. The applicant relied on Article 3 of Protocol No. 1 to the Convention and Article 6 § 2 of the Convention.

I. CIRCUMSTANCES OF THE CASE

2. On 4 October 2014 the applicant was elected to Parliament (*Saeima*). At that time, criminal proceedings against him were pending before the first-

instance court concerning the charge of providing false information in a tax return.

3. On 5 February 2015 Parliament gave its consent to the applicant's criminal trial being continued. Therefore, in accordance with the Rules of Parliamentary Procedure (*Saeimas kārtības rullis*), the applicant lost his right to participate in the work of Parliament pending the outcome of the criminal proceedings.

4. On 29 February 2016 the applicant challenged the constitutionality of the relevant provisions of the Rules of Parliamentary Procedure. He argued that this interference was not necessary in a modern society. He submitted that due to the absence of the necessity criterion, a further assessment of the proportionality of the interference was not pertinent.

5. By a final decision of 22 March 2016, the Constitutional Court (*Satversmes tiesa*) refused to initiate proceedings, on the grounds that the legal reasoning provided was manifestly insufficient for allowing the claim. It noted that, in accordance with its case-law, when an individual challenged the constitutionality of a legal provision, an analysis had to be included as to: (1) whether the impugned legal provision interfered with the individual's rights; (2) whether such interference was provided for by law and had a legitimate aim; and (3) whether the interference was proportionate to that legitimate aim. In order to establish the proportionality of the interference, it had to be determined: (a) whether the chosen measure was appropriate for achieving the legitimate aim; (b) whether the measure was necessary, that is, whether the legitimate aim could not be achieved by less restrictive measures; and (c) whether the benefit to society outweighed the restriction on the individual's rights.

6. The Constitutional Court found that the applicant had not substantiated that the legislature had not had the right to regulate the exercise of the right to sit as a member of parliament in the manner set out in the impugned provisions. The applicant had not demonstrated that the alternative measure proposed by him – revocation of the prohibition on taking part in the work of Parliament while criminal proceedings were pending – would achieve the legitimate aim to the same extent. He had not argued that the impugned provisions had not corresponded to the social reality or that they had conflicted with the legal relationships that had become prevalent since the enactment of the impugned provisions, those being the possible grounds for reassessing their constitutionality. No reasoning had been put forward to show that the legal regulations concerning parliamentary immunity in other European Union member States would be applicable to the Latvian legal system. Moreover, the complaint had not contained any legal reasoning arguing that the benefit to society would be outweighed by the restriction imposed on the individual's rights by the impugned provisions.

7. By a final judgment of 1 August 2016, the applicant was convicted of providing false information in his tax return. As of that day, he lost his status as a member of parliament.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Domestic law

8. The relevant sections of the Law on the Constitutional Court (*Satversmes tiesas likums*) have been summarised in *Ēcis v. Latvia* (no. 12879/09, §§ 28-31, 10 January 2019).

9. Section 17(2) of the Rules of Parliamentary Procedure as in force at the material time provided that when Parliament gave its consent to the initiation of a prosecution against a member of parliament, that member lost the right to participate in sittings of Parliament, in committee meetings and in other formations to which he or she had been elected or appointed, until the discontinuation of the criminal proceedings, or conviction. Section 19 of the Rules of Parliamentary Procedure regulates the financial consequences of such suspension.

2. Domestic practice

10. In case no. 2019-08-01 the Constitutional Court examined a complaint that in essence was identical to that raised by the applicant, lodged by another member of parliament. By a final judgment of 23 December 2019, the Constitutional Court declared unconstitutional the restriction on participating in the work of Parliament and the resultant financial consequences, as set out in sections 17 (2) and 19 of the Rules of Parliamentary Procedure. It concluded that the interference had had the legitimate aim of protecting a democratic State governed by the rule of law and the reputation of Parliament. However, it had been disproportionate as it had deprived the affected members of parliament of the most important right they had been endowed with, namely the right to vote. The Constitutional Court also found the interference to be incompatible with the right to presumption of innocence.

THE COURT'S ASSESSMENT

11. The applicant complained that the statutory prohibition on participating in the work of Parliament during the criminal trial had been contrary to Article 3 of Protocol No. 1 to the Convention and Article 6 § 2 of the Convention.

12. It was not contested between the parties that with respect to this complaint the relevant domestic remedy was an application with the Constitutional Court (for the Court's case-law on the effectiveness of the

Constitutional Court when the interference emanates from a legal provision in Latvia see *Ēcis v. Latvia* (no. 12879/09, §§ 47-49, 10 January 2019).

13. The Government argued, however, that the applicant had failed to exhaust this remedy as his constitutional complaint had been rejected on procedural grounds, namely failure to provide sufficient legal reasoning (see paragraphs 5-6 above). They relied on, among other authorities, *Grišankova and Grišankovs v. Latvia* ((dec.), no. 36117/02, ECHR 2003-II) and *Gubenko v. Latvia* ((dec.), no. 6674/06, 3 November 2015).

14. The applicant disagreed, arguing that his constitutional complaint had complied with all the procedural requirements. The refusal to initiate constitutional proceedings had been based on the merits of his complaint, rather than on any procedural shortcomings.

15. According to the Court's case-law, if the applicant has expressly and in substance raised before the Constitutional Court the complaint subsequently brought before the Court, and the Constitutional Court has rejected it for lack of legal reasoning, the Court will assess the reasoning provided in the decision (see *Ēcis v. Latvia*, no. 12879/09, §§ 50-55). Where the application is rejected for failure to comply with the admissibility criteria before the Constitutional Court, the Court will consider that the applicant has not exhausted the available domestic remedies (see *Gubenko*, cited above §§ 9 and 25, and *Svārpstons and Others v. Latvia* (dec.), no. 14976/05, §§ 26 and 51, 6 December 2016). Where, however, the Constitutional Court has, at least partly, expressed its position on the substance of the applicant's complaint, the Court will consider that the applicant provided the national authorities with the opportunity of putting right the violations alleged against them (see *Ēcis*, cited above, §§ 20 and 53).

16. In the present case, the Constitutional Court indicated a list of points in respect of which the constitutional complaint lacked the necessary legal reasoning (see paragraph 6 above). The Court is prepared to accept, in view of the above reasoning and being mindful of its own subsidiary role, that the constitutional complaint lodged by the applicant did not comply with the formal requirements as laid down in law and interpreted by the Constitutional Court. In particular, the Constitutional Court found that the applicant had failed to analyse whether the damage the impugned interference caused to his rights outweighed the benefits to society – an element of the analysis which, according to the Constitutional Court's established case-law, applicants are obliged to include when lodging constitutional complaints (see paragraph 5 above). The applicant had thus failed to provide legal reasoning in line with the requirements set forth in the Constitutional Court's case-law (compare and contrast *Ēcis*, cited above, §§ 52-53).

17. Accordingly, the applicant failed to lodge a proper constitutional complaint and thus failed to exhaust domestic remedies. Moreover, the applicant was an experienced politician and there is no reason to believe that he did not have the necessary resources at his disposal to prepare a sufficiently

reasoned constitutional complaint, as well as to eliminate the deficiencies identified by the Constitutional Court. The Court likewise observes that at a later date the Constitutional Court accepted a properly drafted complaint brought by another member of parliament who had raised the same legal issue as the applicant (see paragraph 10 above).

18. It follows that this complaint must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. This conclusion obviates the need to consider if other admissibility requirements have been complied with.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 April 2022.

Martina Keller Deputy Registrar	Ivana Jelić President