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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3244/2018*, **, ***

<i>Communication submitted by:</i>	Edvards Kvasnevskis (represented by counsel, Jeremy McBride)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	9 May 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 September 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	25 October 2023
<i>Subject matter:</i>	Impossibility of standing for election to the parliament as independent candidate
<i>Procedural issue:</i>	Admissibility – incompatibility <i>ratione materiae</i> ; exhaustion of domestic remedies
<i>Substantive issue:</i>	Right to stand for election
<i>Article of the Covenant:</i>	25
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Edvards Kvasnevskis, a national of Latvia, born in the former Union of Soviet Socialist Republics on 19 July 1938. He claims that the State party violated his rights under article 25 of the Covenant by preventing him from standing for election in 2010 because he was not included in a list of candidates submitted by a legally registered political party or a legally registered association of political parties. The Optional Protocol entered into force for Latvia on 22 September 1994. The author is represented by counsel.

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication:
Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo,
Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly
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*** An individual opinion by Committee member Rodrigo A. Carazo (dissenting) is annexed to the present Views.



Facts as submitted by the author

2.1 The author is a co-founder of the Latvia Tenants' Association, which seeks to defend the rights of tenants.¹ He has been the President of the association since its founding on 6 January 2009. He is concerned about the situation of tenants living in apartments formerly used for public housing that have been returned to their former owners. In particular, he is concerned about homelessness caused by evictions, an issue that has not been adequately addressed. The State institutions have been reluctant to engage with such civil society organizations as the Latvia Tenants' Association.

2.2 The author considered that the lack of interest by the authorities could be overcome by drawing the issue to the parliament's attention. However, none of the existing political parties appeared to be willing to respond to the attempts of the Latvia Tenants' Association to address the situation of tenants until the formation of the Latvian Russian Union in 2014. This may be linked to the fact that many of the tenants in the apartment buildings that have been returned to their former owners are non-citizens and thus unable to vote in parliamentary elections.

2.3 According to article 9 of the Parliamentary Elections Law, inclusion in the list of candidates of a legally registered political party or a legally registered association of political parties is a prerequisite for standing for election to the parliament. Persons included in a list of candidates do not need to be members of the political party concerned.

2.4 The author was reluctant to belong to a political party because he feared that such membership would prevent him from raising the issues faced by the tenants in apartments that had been transferred back to their former owners. Therefore, he did not belong to a party until 28 February 2008, when he joined the Tautas Saskaņas Partija, which became the Social Democratic Party "Saskana" in March 2010. He was a member of the party until 21 April 2010. At the time, the party was the only opposition party in Latvia and the only one that seemed willing to challenge the official indifference to the situation of tenants. However, the expectation that the opposition would be more interested than the government majority was incorrect.

2.5 The author's concern about possible constraints arising from his membership in a political party on his ability to represent the interests of the Latvia Tenants' Association proved justified. He was expelled from the Social Democratic Party "Saskana" on 21 April 2010, after having called on 100 deputies of the parliament to ask whether it was justified that tenants in restituted apartments were deprived of the possibility of purchasing their apartments, and whether the deputies would accept the collective complaints procedure established by the Additional Protocol to the European Social Charter providing for a System of Collective Complaints. His action was reported in a newspaper article published two days before his expulsion from the party. The author was told by the party that he had no right to engage in such activity without the party's permission. Such action was considered to have breached the duty of a party member to protect the party's prestige and to execute the decisions of party institutions.

2.6 The author had decided that becoming a member of the parliament would be the only way for him to raise the situation of tenants. While still a party member, he had submitted requests to be included in the election list of the Tautas Saskaņas Partija, on 9 December 2008, and of the successor Social Democratic Party "Saskana", on 12 April 2010. However, he never received a response to his requests.

2.7 The Latvia Tenants' Association was neither a legally registered political party nor a legally registered association of political parties. Obtaining such status was not possible as the association comprised mostly non-citizens.

2.8 On 30 March 2010, the author applied to the Constitutional Court of Latvia, claiming that the party-list system prescribed in article 9 of the Parliamentary Elections Law was in contradiction with article 9 of the Constitution of Latvia, which stated that any citizen of

¹ The Latvia Tenants' Association seeks to defend the rights of tenants living in apartments formerly used for public housing that have been the subject of transfer of ownership (restitution) back to their former owners.

Latvia who enjoyed the full rights of citizenship and was more than 21 years of age on the first day of elections could be elected to the parliament. His application was rejected by the Constitutional Court on 28 April 2010, pursuant to articles 17 (1) and (11) and 19 (2) of the Constitutional Court Law. The Constitutional Court held that the author could not be regarded as a person whose constitutional rights had been violated since he had not first made any effort to become a candidate for election to the parliament.

2.9 On 19 July 2010, the author submitted an application to the Central Election Commission to be included in a list of candidates standing for the parliamentary elections to be held on 2 October 2010. His application was rejected by the Central Election Commission on 22 July 2010. The decision stated that, pursuant to article 9 of the Parliamentary Elections Law, only political parties could submit lists of candidates to the Commission. However, it would not have been practicable for the author to have sought to form his own political party after the rejection of his request to be included in the list by the Commission, given the time required for registration and the deadline of 3 August 2010 for submitting lists of candidates for the October 2010 election.

2.10 The author appealed the Central Election Commission's rejection of his application before the Regional Administrative Court, but his appeal was dismissed. On 16 August 2010, the author submitted a constitutional complaint requesting a review of the decision of the Regional Administrative Court. In its ruling of 14 September 2010, the Constitutional Court accepted that the author had fulfilled the requirements of articles 17 (1) and (11) and 19 (2) of the Constitutional Court Law but held that his application contained no legal basis for the opinion that the rights guaranteed by article 9 of the Constitution could not be restricted in any way. The author had not evaluated the option of fulfilling the legal requirement to be a member of a party in order to run for election, as set out in article 9 of the Constitution. The Court also considered that, in the author's application, there was no evaluation of whether the reasons for the imposition of such criteria were legitimate nor any analysis as to whether the criteria set out in the law were appropriate, necessary and suitable for achieving a legitimate aim. Therefore, the author's application contained no basis for the statement that such criteria disproportionately restricted the right to be elected as set out in article 9 of the Constitution or that their application created an unjustifiable violation of article 91 of the Constitution with regard to the principle of equality before the law.

2.11 The author's attempts to be included by political parties in the lists of candidates for the 2014 elections to the parliament were also unsuccessful. The parties were not prepared to include persons who were not members of those parties. However, he was included, without becoming a member, in the list of the newly formed Latvian Russian Union, whose policy relating to tenants affected by restitution was similar to that of the Latvia Tenants' Association. However, the author disagreed with many policies of the Latvian Russian Union. None of the candidates of the Latvian Russian Union were elected as members of the parliament.

2.12 On 20 November 2014, the European Court of Human Rights, by a single-judge decision, declared the author's application inadmissible on the ground that the admissibility criteria set out in articles 34 and 35 of the Convention had not been met.

Complaint

3.1 The author submits that the fact that he was prevented from standing for election to the parliament as an independent candidate and that he was required to be on the list of candidates presented and endorsed by either a legally registered political party or a legally registered association of political parties violated his rights under article 25 of the Covenant.

3.2 The author notes that, in paragraph 17 of its general comment No. 25 (1996), the Committee stated that the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. The Committee has found restrictions on the ability to stand for election to be compatible with article 25 of the Covenant where these were based on objective criteria and had a purpose

consistent with the domestic decision-making process.² In one particular case, in which a person had been struck off the list of candidates for local elections on the basis of insufficient proficiency in the official language, the Committee found a violation of article 25 on the grounds that the review of proficiency had not been based on objective criteria and that the State party had not demonstrated the review to be procedurally correct.³ The Committee has also underlined the importance of respect for the principle of proportionality in assessing the acceptability of restrictions.⁴

3.3 The author is not contesting the compatibility of a list system as such with article 25 of the Covenant and accepts that the restriction of his right under article 25 is prescribed by law. However, this restriction does not have a legitimate aim and its impact on the right to be elected is disproportionate. The author is aware that the issue he raises in his communication has not thus far been considered by the Committee but that there are relevant judgments by the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights.⁵ The author has also referred to paragraph 7.5 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, which guarantees the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination. On the basis of that guarantee, paragraph 130 of the *Guidelines on Political Party Regulation*, issued by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) and the European Commission for Democracy through Law (the Venice Commission), contains a call for the revision of the current legislation in the OSCE region, which bans the candidacy of independent candidates, and for legislation on political parties in elections to include specific mention of the rights of independent candidates to run for election. Furthermore, in its final report on the parliamentary elections held in Latvia on 4 October 2014, the Office for Democratic Institutions and Human Rights stated that it was "not possible to stand in elections as an independent candidate, contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document".⁶ It also stated that, in line with previous OSCE recommendations and commitments, which specifically protect the right of individual candidates to run for office, the legislation should be revised to enable candidates to run independently.⁷

3.4 The requirement to be included in a list submitted by a legally registered political party or association of political parties was part of the original list system in force until 1995. The introduction of that requirement was not based on any scheme to enhance democracy or any special theory regarding electoral systems. The requirement was simply introduced for the administrative convenience of the Central Election Commission. Given the significance of the right to stand for elections under article 25 for achieving democracy, administrative convenience cannot be regarded as a legitimate aim for the complete removal of the right to

² *Debreczeny v. Netherlands* (CCPR/C/53/D/500/1992), para. 9.3; and *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.6.

³ *Ignatane v. Latvia* (CCPR/C/72/D/884/1999), para. 7.4.

⁴ *Pietraroia v. Uruguay*, communication No. 44/1979, para. 16; and *Gillot v. France* (CCPR/C/75/D/932/2000), para. 14.5.

⁵ See *Tanganyika Law Society, The Legal and Human Rights Centre and Mtikila v. the United Republic of Tanzania*, Applications No. 009/2011 and 011/2011, Judgment, 14 June 2013, which concerned a requirement that any candidate for presidential, parliamentary or local government elections be a member of and be sponsored by a political party. The applicants had sought a declaration, inter alia, that this restriction on candidacy was in violation of article 13 (1) of the African Charter on Human and Peoples' Rights. The African Court concluded that the limitation could not be regarded as falling within the permissible restrictions set out in article 27 (2) of the African Charter. In doing so it diverged from an earlier judgment of the Inter-American Court of Human Rights, in *Castañeda Gutman v. Mexico*, Judgment, 6 August 2008, in which such a limitation had been upheld. That court found that a similar restriction to that imposed in Latvia was not in violation of article 23 (1) of the American Convention on Human Rights and emphasized that there was a valid purpose for the restriction.

⁶ OSCE/Office for Democratic Institutions and Human Rights, "Republic of Latvia Parliamentary Elections, 4 October 2014, Election Assessment Mission final report" (Warsaw, 18 December 2014), p. 6.

⁷ *Ibid.*

stand for election, which persons not belonging to parties had had until 1995. A legitimate aim could only be one that sought to promote democracy or to remove a threat to its existence. Even if concern about an administrative burden for the Commission could be considered a legitimate aim for a restriction imposed on the author's right, the particular restriction was excessive, given the existence of alternative means of checking eligibility and individual voter signatures on two or more lists and the impact on persons not belonging to political parties.

3.5 The restriction of lists of candidates by article 9 of the Parliamentary Elections Law to those submitted by a legally registered political party or association of political parties in effect compelled everyone wishing to seek election either to become a member of an existing party, regardless of whether they agreed with its policies, or to establish their own party or association.⁸

3.6 Furthermore, the author's experience has demonstrated that no political party in Latvia in 2010 was prepared to address the injustice being done to the tenants of restituted apartments. Given the lack of attention by existing political parties, the author would have been able to stand as a candidate for an existing party only if he were prepared to subordinate his political beliefs to those of the party concerned. Such was the situation in 2014 when he was included in the list of the Latvian Russian Union. This is hardly consistent with the political freedom and democratic values that the Covenant guarantees.

3.7 Although no formal barrier prevented the author from creating his own political party, the requirement to belong to a party as an essential prerequisite to standing for election amounted to a disproportionate interference with his rights under article 25 of the Covenant. Moreover, the supposed option of establishing a new party is more theoretical than real. It fails to account for the practical difficulty of the author's establishing a party shortly before an election when he could not become a member of an existing party.

State party's observations on admissibility and the merits

4.1 On 21 March 2019, the State party submitted its observations on admissibility and the merits.

4.2 Regarding the facts, the State party submits that the author was born in Kazan, in the former Union of Soviet Socialist Republics, in 1938. On 28 February 2008, the author joined the political party entitled the Tautas Saskaņas Partija. In 2010, the Social Democratic Party "Saskana" was formed from three political parties: the Tautas Saskaņas Partija, the Jaunais Centrs and the Sociāldemokrātu Savienība. On 21 April 2010, board members of the Social Democratic Party "Saskana" examined the author's attitude towards the party and decided to exclude him from membership for failure to comply with its rules.

4.3 On an unspecified date, the author applied to the Constitutional Court, requesting it to examine the constitutionality of article 9 (1) of the Parliamentary Elections Law in relation to articles 1, 9, 89 and 91 of the Constitution. The author also requested the Constitutional Court to amend article 9 of the Parliamentary Elections Law with a third paragraph establishing the right of the citizens of Latvia to stand for parliamentary elections according to a majoritarian electoral system. On 28 April 2010, the Court refused to initiate the constitutional proceedings. According to the Court, the author in his complaint had, in general terms, expressed his opinion that persons who were not members of a political party could be elected as members of the parliament. The author's complaint was in essence an *actio popularis*. The Court also emphasized that the author had failed to indicate whether he wished to be elected to the parliament or whether he had ever been a member of any political party or had attempted to stand for parliamentary elections. The Court also noted that the contested norm indicated only the entities that could submit the lists of candidates for the parliamentary

⁸ The author also mentions that the need to join an existing political party in order to stand for election is contrary to the freedom of association guaranteed by article 22 of the Covenant, since the right to freedom of association implies that, in general, no one may be forced by the State to join an association. However, the author declares that he does not invoke a violation of article 22, but simply refers to this aspect to give more weight to his claim under article 25.

elections, but did not determine that only a member of a political party could stand for such elections.

4.4 On 19 July 2010, the author submitted an application to the Central Election Commission, requesting it to include him on the lists of the Riga region for the parliamentary elections as an independent candidate. The author argued that he was a citizen of Latvia and that, pursuant to article 9 of the Constitution, he had the right to stand for parliamentary elections. On 22 July 2010, the Commission informed him that, in accordance with domestic legislation, lists of candidates to parliamentary elections could be submitted only by political parties or associations of political parties. The Commission submitted that its task was the coordination of the election process, that is, the registration of the lists of candidates submitted for the elections by the political parties or their associations. On an unspecified date, the author lodged a complaint with the Regional Administrative Court against the decision of the Commission, requesting the court to dismiss the decision and order the Commission to register his independent candidacy in the elections of the tenth parliament.

4.5 On 4 August 2010, the Regional Administrative Court refused to accept the author's complaint. The court established that the author had no subjective right to request the Central Election Commission to register an independent candidacy before parliamentary elections. The court also indicated that the proportional electoral system was based on the idea of the necessity of proportional representation for the political power (political party) and that the proportional election system envisaged voting for political parties or their associations, instead of particular independent candidates.

4.6 On 16 August 2010, the author again applied to the Constitutional Court, requesting it to declare article 9 (1) of the Parliamentary Elections Law incompatible with articles 1, 9, 89 and 91 of the Constitution. On 14 September 2010, the Constitutional Court refused to initiate the proceedings, finding that the legal argument was manifestly insufficient to satisfy the claim. On 11 March 2011, the author submitted an application to the European Court of Human Rights. On 27 November 2014, the European Court informed the author that his Application No. 18489/11 in the case of *Kvasnevskis II v. Latvia* had been declared inadmissible.

4.7 On 4 October 2014, the author stood for the parliamentary elections as a member of the Latvian Russian Union. The party received 1.58 per cent of electoral votes and obtained no seats in the parliament.

4.8 The State party points to the essential ambiguity of the alleged violation of article 25 of the Covenant. On the one hand, the author appears to claim that his rights under article 25 have been restricted, as he has been unable to stand for parliamentary elections as an independent candidate. On the other hand, he submits that he is not contesting the compatibility of a list system as such with article 25 of the Covenant. He does not complain about the electoral system of Latvia, which does not allow independent candidates to submit their candidacy to parliamentary elections, allowing instead only the political parties or associations of political parties to submit such lists. The author's complaint appears, indeed, to be linked to the existing electoral system of Latvia as it concerns the system of candidate lists established by article 9 of the Parliamentary Elections Law.

4.9 For a complaint to be compatible *ratione materiae* with the Covenant, the right relied on by the author must be protected by the Covenant. In the present case, the alleged right to stand for parliamentary elections as an independent candidate is not covered by article 25 of the Covenant, recalling that the Covenant does not impose any particular electoral system.⁹ The State party notes that the Covenant sets only the general principles with which domestic regulation must comply, but the choice of a specific electoral system rests with each national legislature. The State party clarifies that the proportional electoral system, the so-called list system of political parties, has existed in Latvia since the very first parliamentary elections, in 1922.¹⁰ The electoral system that followed the renewal of independence, in 1990, was largely similar to that used before the successive occupations. When adopting the

⁹ General comment No. 25 (1996), para. 21.

¹⁰ The election of independent candidates was not provided for and the regulation envisaged the right of persons to stand for parliamentary elections only through organized political associations.

Parliamentary Elections Law, on 25 May 1995, one of the reasons the legislature was in favour of a list of candidates for parliamentary elections submitted by the political parties or their associations was the need to create prerequisites for the development of the political party system.

4.10 With its amendments of 26 March 1998 to the Parliamentary Elections Law, the legislature specified that only political parties or associations of political parties could submit lists of candidates to parliamentary elections. That provision remains in force. Since the renewal of the independence of Latvia, individuals have not had the right to stand for parliamentary elections as independent candidates. Similar regulation of the electoral system is common across several European countries, with the nomination of candidates strictly list-based and single-candidate lists not allowed.¹¹ The State party therefore firmly believes that the author has no subjective rights deriving from the Covenant that oblige the State to introduce a particular electoral system or to organize its electoral process so as to introduce the right of independent candidates to stand for parliamentary elections. The author's communication should be declared inadmissible *ratione materiae*.

4.11 The author's complaint under article 25 should also be declared inadmissible, as it did not comply with the procedural requirements. Firstly, the author has never challenged before the governing body of the Social Democratic Party "Saskana" its decision of 21 April 2010 to exclude him from membership. Secondly, the author failed to comply with the format for submitting a constitutional complaint to the Constitutional Court. Therefore, the author has never fulfilled the formal requirements for the submission of the constitutional complaint. In its decision of 14 September 2010, the Constitutional Court held that the author's legal argument was manifestly insufficient to initiate constitutional proceedings. In the case of *Gubenko v. Latvia*,¹² the European Court established that the Constitutional Court, similarly to the present case, had informed the applicant that his constitutional complaint did not comply with article 19 of the Law on the Constitutional Court, which sets out the formal requirements. Those include the requirement that anyone submitting a constitutional complaint must substantiate the claim that an existing legal provision has infringed the fundamental right invoked. In *Gubenko v. Latvia*, the Court found that, by failing to submit a proper constitutional complaint through means complying with the requirements set out in the domestic law, the applicant had failed to exhaust domestic remedies. Accordingly, the author's complaint under article 25 should be rejected for failure to exhaust domestic remedies.

4.12 On the merits, the State party reiterates that the Covenant does not oblige States parties to create a specific electoral system nor does it provide a justifiable right for the author to stand in elections as an independent candidate. There has been no interference with the author's right under article 25 of the Covenant, since the author has never been prevented from creating his own political party, together with individuals sharing similar political opinions, in order to stand for parliamentary elections. Indeed, the author has acknowledged that "no formal barrier" exists under the electoral system of Latvia to establishing his own political party. In addition, the author has never been struck off the list of candidates to parliamentary elections by the decision of the competent institution or the political party for failure to comply with any formal criteria. As regards the author's allegation that "the restriction on his right under article 25 was prescribed by law" but "did not have a legitimate aim and its impact on the right to be elected was disproportionate", the State party believes that the regulation on the submission of lists of candidates to parliamentary elections prescribed by article 9 of the Parliamentary Elections Law has several legitimate aims and is reasonable. The author has failed to provide arguments as to why the alleged violation of the right to stand for parliamentary elections because of the list system of political parties should be considered unreasonable.

¹¹ European Union, Directorate General for Internal Policies, Committee on Constitutional Affairs of the European Parliament, *Independent Candidates in National and European Elections*, Study (Brussels, 2013).

¹² European Court of Human Rights, *Gubenko v. Latvia*, Application No. 6674/06, Decision, 3 November 2015.

4.13 Members of the parliament are elected on the basis of a party-list proportional representation system, reflecting the idea of the proportional representation of political forces. Political parties are political instruments of expression of the interests of the majority of the people. The Parliamentary Elections Law specifies the procedure for submitting candidates to the parliamentary elections (art. 9). The author's allegations that the Central Election Commission should have registered him as an independent candidate are misguided, as the Commission may not register independent candidates for parliamentary elections. Accordingly, the Administrative Regional Court refused to accept the author's complaint against the decision of the Commission of 22 July 2010. The Court, in its decision of 4 August 2010, established that the author had no subjective rights that would derive from objective rights to request the Commission to register an independent candidacy for parliamentary elections.

4.14 In practice, political parties nominate for election their members, supporters or persons who are recognizable to the public to secure greater representation of the party in the parliament. The order of a candidate on the list does not play a role, given the possibility of preferential votes. The general requirements for establishing a political party in Latvia are not overly burdensome. Under current legislation on the electoral system of the State party, it is possible to stand for parliamentary elections without being a member of a political party and such examples exist in practice. The State party submits that in Western countries, an understanding of the obligation to ensure free elections is inextricably linked with a multiparty system, and it is assumed that only a multiparty system can guarantee free choice among several genuine alternatives.¹³ The functioning of the parliament of Latvia is adapted to a party-based electoral system to avoid overly fragmented partisanship and contribute to a more efficient and stable political process.

4.15 Strong political parties are essential for strengthening parliamentarism, which can be characterized as a traditional form of democracy in the State party. The exercise of the right to stand for parliamentary elections through the list system of political parties is aimed at strengthening the political party system, political culture and parliamentarism in Latvia and, consequently, the democratic State system.

4.16 Finally, the Committee should conclude that the author's claims are manifestly ill-founded and that there has been no violation of article 25 of the Covenant in the present case.

Author's comments on the State party's observations

5.1 On 22 July 2019, the author submitted comments on the State party's observations on admissibility and the merits. He asserts that his communication is admissible and that there has been a violation of article 25 of the Covenant.

5.2 As regards the scope, the author claims that his communication concerns the current electoral system, which bars individuals, himself in particular, from standing for election unless they are included in a list submitted by a legally registered political party or association of political parties. Independent candidates were able to submit their candidacy and stand in parliamentary elections until the legislative change to the electoral system in 1995.

5.3 The State party's objection that his communication should be held inadmissible *ratione materiae* relies upon the observation of the Committee in its general comment No. 25 (1996) that article 25 does not impose any particular electoral system and on the practice of States, including the State party. However, this assertion ignores the provision in paragraph 17 of the general comment that the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination, that requirement should be reasonable and not act as a barrier to candidacy. The possibility for any individual to stand for election without being a member of a specific party therefore falls within the scope of the right guaranteed by article 25 of the Covenant. This provision recognizes that there may be justifications for imposing restrictions on the ability of individuals to stand for election. Any such restrictions must, to be compatible with

¹³ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised ed., (Kehl, Germany, N.P. Engel, 2005), p. 584.

article 25 (a) of the Covenant, be based on objective criteria, have a purpose consistent with the domestic decision-making process and respect the principle of proportionality.¹⁴ Accordingly, the author's communication should be considered admissible *ratione materiae*.

5.4 Furthermore, the State party's objections to the exhaustion of domestic remedies are misconceived. A challenge to the author's expulsion from the Social Democratic Party "Saskana" cannot be regarded as an available domestic remedy that should have been exhausted, since his complaint concerns the inability of persons who do not belong to political parties to be allowed under the electoral system of Latvia to stand as candidates in parliamentary elections.

5.5 Secondly, the ruling of the Constitutional Court of 14 September 2010 affirmed that the merits of the author's constitutional complaint were that the first paragraph of article 9 of the Parliamentary Election Law was unconstitutional. The author had argued that there was no provision other than age that allowed the restriction of a person's ability to stand for election, and that there was discrimination in the treatment of non-party fellow citizens compared with those who belonged to a party. These were sufficient legal grounds for the author's complaint, yet they were rejected peremptorily without any opportunity for the author to respond to the submission by the State party setting out possible justifications for the restriction on the right to stand for election. In addition, his submissions to the Constitutional Court were not general, unlike those in the referenced decision in *Gubenko v. Latvia*. His claim that article 9 of the Parliamentary Election Law was unconstitutional was, in fact, supported by 14 paragraphs of pertinent arguments. This is not a genuine instance of failing to substantiate the grounds of constitutionality but a situation in which the Constitutional Court refused to consider the submissions regarding the unconstitutionality of the legislative provision concerned. The State party's assertion that the author had failed to exhaust domestic remedies by not fulfilling the formal requirements for the submission of a constitutional complaint is unwarranted, and his communication should be considered admissible.

5.6 As to the merits, the author refers to the State party's argument that the author has not been prevented from creating his own political party together with other individuals. The author has never disputed that it was open to him to establish a political party, but his complaint is not about being so prevented. He is complaining about not being able to stand for election without being a member of a political party, referring to article 9 of the Parliamentary Election Law.

5.7 As to the State party's objection that the author has not provided arguments as to why the inability to stand for election through the list system of political parties is to be considered unreasonable, the author reiterates arguments from the initial communication: there was no legitimate aim for excluding the possibility of independent candidates standing for election alongside candidates on the lists of political parties, and the system entailed an obligation to associate and the undue burden of establishing a party prior to standing for election. In addition, the State party has sought to portray the exclusion of the possibility of independent candidates from standing for election since 1995 as the way to strengthen the political party system. This assertion is incorrect, as the Parliamentary Election Law was changed in 1995 for reasons of administrative convenience for the Central Election Commission, an issue that could have been addressed by other means so as not to affect the rights under article 25 of the Covenant. Prior to this change, independent candidates could stand for election if their nomination was signed by 100 voters. Moreover, under the present list system, there is no requirement that members of the parliament, after having been elected, retain membership in the party or association in whose list of candidates they had been included.

5.8 Administrative convenience cannot be sufficient justification for a significant restriction on the right to stand for election. In addition, there is no evidence that the list system has strengthened the political party system, given the freedom of those elected to abandon their parties after being elected. The requirement to be a member of a political party also entails an obligation to associate, which the African Court on Human and People's

¹⁴ *Debreczeny v. Netherlands*, para. 9.3; *Gorji-Dinka v. Cameroon*, para. 5.6; *Pietrarroia v. Uruguay*, para. 16; and *Gillot v. France*, para. 14.5.

Rights has found to be unjustified. As this compulsion was not introduced to enhance democracy or pursuant to any theory regarding electoral systems, but rather for administrative convenience, which has remained unsubstantiated, it cannot be regarded as a justification for the restriction imposed on the right under article 25 of the Covenant.

5.9 The State party's argument that the author could have established a political party in order to stand for election is completely unrealistic, as it fails to take into account the practical difficulty of establishing a party shortly before an election when it has become clear, despite best efforts, that it was impossible to use existing parties for the purpose of standing for election.¹⁵

5.10 The author is not seeking the withdrawal of the party-list system but, rather, the restoration of the possibility of individuals to stand as independent candidates alongside those from political parties. This would be in line with the ability of the State party to determine its electoral system.

5.11 In the opinion of the African Court on Human and People's Rights and as set out in the *Guidelines on Political Party Regulation*, a complete ban on independent candidates is inconsistent with the right to stand for election.

5.12 There is the need for a compelling justification to preclude persons from standing for election to the parliament of a country without being on a list of candidates submitted by a political party or an association of political parties. No such justification exists for the restriction that has been applied to the author, as explained above.

5.13 Finally, the author invites the Committee to declare his communication admissible, to find a violation of article 25 of the Covenant and to request the State party, in accordance with article 2 (3) (a) of the Covenant, to provide him with an effective remedy, including compensation and legal expenses.

State party's additional observations

6.1 On 30 November 2020, the State party submitted a rejoinder to the author's comments, reiterating its observations of 21 March 2019.

6.2 The State party submits that the author primarily argues that the impossibility of standing as a candidate for election to the Parliament other than by being included in a list of candidates submitted by a legally registered political party or association of political parties has resulted in the alleged violation of the Covenant. At the same time, the author argues that he did not claim that the list system of Latvia, as such, was incompatible with article 25 of the Covenant. In its observations, the State party drew attention to this contradiction. It concludes that there is no dispute as to the fact that the author's complaint before the Committee is about the existing electoral system of the State party as established under article 9 of the Parliamentary Elections Law, which prevents individual candidates from standing for election without being on the list of a party.

6.3 As regards its argument of inadmissibility *ratione materiae*, the State party submits that article 25 of the Covenant does not guarantee a specific right to stand for election as an individual candidate outside the lists submitted by the parties. General comment No. 25 (1996) refers only to party membership, whereas the electoral system of Latvia does not require party membership as a prerequisite to standing for election. The State party recalls that, in both the 2014 and 2018 parliamentary elections, candidates who were not members of a party were included in lists of candidates submitted to the Central Election Commission by the political parties. The author, however, contests the list system as such. Article 9 of the Parliamentary Election Law does not require a candidate on the list to be a member of a political party, only that the list be submitted by a party. The author has in fact expanded the scope of article 25 of the Covenant and requested the Committee to conclude that article 25 imposes an obligation to States parties to create a specific electoral system: one in which States parties would have an obligation to allow independent candidates to stand for election without being listed. The author has requested the Committee to depart from its own

¹⁵ The lists of candidates must be submitted between 60 and 80 days before an election, and the registration of a political party tends to take at least two months.

conclusions set out in paragraph 21 of its general comment No. 25 (1996), namely, that although article 25 does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The State party reiterates its request to consider the author's communication incompatible *ratione materiae* with article 25, as the right to stand for parliamentary elections as an independent candidate falls outside its scope.

6.4 As regards its argument that the author has not exhausted all available domestic remedies, the State party recalls the decision of the Constitutional Court of 14 September 2010, wherein it was noted that the author had claimed that article 9 of the Parliamentary Election Law was incompatible with the Constitution. The Court held that the author's complaint did not include any arguments for how a disputed criterion for nomination to stand for election would disproportionately limit the author's rights under article 9 of the Constitution to be elected, or unjustifiably infringe upon the principle of equality as enshrined in article 91 of the Constitution. The Court therefore considered the legal argumentation provided in the author's application to be manifestly insufficient to find in his favour. The author did not discharge before the Court the burden of proof to establish that a contested provision was *prima facie* incompatible with a provision of the Constitution. According to the Court's case law, the opinion of an author is not a sufficient legal argument.

6.5 The author's first complaint to the Constitutional Court was considered in its decision of 28 April 2010 as *actio popularis*. The author should have known that his arguments, as presented in paragraphs 4 to 14 of his second constitutional complaint, would not meet the requirements of specificity under article 18 (1) (4) of the Constitutional Court Law. Recalling the Committee's decision in *Apa v. Spain*,¹⁶ which underscored that authors must exercise due diligence in pursuit of available remedies, the State party reiterates that the author failed to comply with the formal requirements for submission of a complaint before the Constitutional Court. Since the Court has not deliberated on the merits of the author's allegations, the author has not exhausted domestic remedies.

6.6 On the merits, the State party submits that the author's complaint is either manifestly ill-founded, claiming that individuals who do not belong to political parties cannot stand for election, as article 9 of the Parliamentary Election Law does not prohibit persons from standing for election if they do not belong to a political party, or the author has failed to show how the State party has interfered with his rights under article 25. The State party recalls the Committee's inadmissibility decision in *A.P. v. Russian Federation*, which concerned another author's claims regarding an alleged violation of article 25 (a) and (b) of the Covenant to the effect that he could not be elected as an independent candidate at genuine periodic elections, other than by being included in the list of a political party registered for the elections in question.¹⁷

6.7 Similarly, the author in the present case has not attempted to stand for election as a non-party member from the list of any party and neither has he explained why he could not create his own political party together with individuals sharing similar political opinions and stand for election from the list of such a party. Given that the author has claimed that he merely wants the restoration of the previous electoral system, the State party notes that it was never possible to stand for election as an individual candidate. The system has always been list-based.

6.8 Regarding the rationale behind the Latvian electoral system, the State party recalls general comment No. 25 (1996), in which the Committee acknowledged that States parties enjoyed a wide margin of appreciation regarding the establishment of their electoral systems. Electoral systems must be compatible with the rights protected by article 25 and they must be free, periodic and genuine. They should also protect the free expression of the will of the electors.¹⁸ The State party recalls the conclusions of the European Court of Human Rights in the case of *Matthews v. the United Kingdom*, which found that the choice of electoral system

¹⁶ CCPR/C/50/D/433/1990, para. 6.2.

¹⁷ CCPR/C/107/D/1857/2008, paras. 10.6 and 10.7.

¹⁸ General comment No. 25 (1996), paras. 21 and 22.

by which the free expression of the opinion of the people in the choice of the legislature was ensured – whether it was based on proportional representation, the “first-past-the-post” system or some other arrangement – was a matter in which the State enjoyed a wide margin of appreciation.¹⁹

6.9 The State party noted that the legitimate aim protected by article 9 of the Parliamentary Election Law was the protection of the democratic system through the strengthening of the system of political parties, political culture and parliamentarism in Latvia. The European Court of Human Rights has noted that the effects of an electoral threshold can differ from one country to another and the various systems can pursue different political aims. None of these aims can be considered unreasonable in themselves.²⁰ The decision of Latvia to create the existing electoral system supported the aim of avoiding the fragmentation of the party system and ensuring the fair representation of parties in the parliament rather than of individuals. The author’s contention that the impugned provision did not pursue a legitimate aim but, rather, was created for administrative convenience, is unfounded. First, there was never an option for individual candidates to stand for election and, second, the list system was established in pursuit of a legitimate aim.

6.10 The State party recalls article 16 of its Law on the Fifth Parliamentary Elections, which sets out the requirement for candidates to be included in a list, as does the current Parliamentary Elections Law. Contrary to what the author submits, the election of independent candidates was never envisaged and the regulation envisaged the right of persons to stand for parliamentary elections only through organized political parties or associations. The author’s argument regarding the lack of a legitimate aim for such a restriction is manifestly ill-founded.

6.11 The State party reiterates that the obligation to ensure free elections is linked to a multiparty system, which can guarantee free choice between several genuine alternatives.²¹ As to the author’s reference to the *Guidelines on Political Party Regulation*, the State party also recalls that the Venice Commission has concluded that a proportional representation system is not automatically synonymous with a list system. A proportional system may be effectively used, albeit very rarely, in combination with individual candidature,²² acknowledging that proportional representation systems do not require the State party to establish a system where individuals can stand for election as individual candidates. On the contrary, States parties enjoy a wide margin of appreciation in this matter. The *Guidelines on Political Party Regulation* underline that individual candidates should be afforded the right to stand for election without being members of political parties and to have an equal opportunity to access the ballot,²³ not that there should be a requirement to allow individual candidates to stand for election without being included in a list.

6.12 Finally, the State party invites the Committee to find the present communication under article 25 manifestly ill-founded, or, alternatively, that there has been no violation of the article since the State party has chosen the most appropriate electoral system to protect the party system, while enabling persons who do not belong to parties to participate in political decision-making.

¹⁹ European Court of Human Rights, *Matthews v. the United Kingdom*, Application No. 24833/94, Judgment, 18 February 1999, para. 64. In that case, the Court found that the very essence of the applicant’s right to vote, as guaranteed by article 3 of protocol No. 1, had been denied.

²⁰ European Court of Human Rights, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights: Right to Free Elections*, updated on 31 August 2020, para. 74.

²¹ Nowak, *U.N. Covenant on Civil and Political Rights*, p. 584.

²² Venice Commission, *Electoral Law* (Strasbourg, 2013), p. 162; and “Report on electoral systems: overview of available solutions and selection criteria”, Study No. 250/2003 (Strasbourg, 2004), p. 8.

²³ *Guidelines on Political Party Regulation*, p. 63.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's objection to the claim of exhaustion of domestic remedies by the author arguing, namely that the complaint he submitted to the Constitutional Court did not meet the formal requirements (paras. 4.3, 4.6 and 4.11) and that the author did not object to his exclusion from the Social Democratic Party "Saskana". The Committee, however, observes that the author addressed the substance of his claims – the illegitimate and unreasonable restrictions on his right to stand as an individual for election to the parliament – in his application of 30 March 2010 and his constitutional complaint of 16 August 2010, but the Constitutional Court rejected them for formal reasons, without considering their merits. The Committee also notes the author's argument that a legal objection to his exclusion from the Social Democratic Party "Saskana" is not in any way related to the substance of his claims and hence does not represent an effective remedy. The Committee therefore finds that consideration of the author's communication is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol.

7.4 The State party also argues that the author's claims are inadmissible *ratione materiae* for not falling within the scope of article 25 of the Covenant. The author, however, contends that his main claim concerns his inability to stand as an independent candidate for election to the parliament without being included in the list of candidates of a political party or an association of political parties. He also contends that the restrictions on his right to stand for election do not have a legitimate aim and that their impact is disproportionate (paras. 3.3 and 5.3). The Committee considers that the author's claims fall within the scope of article 25 of the Covenant, which guarantees the right of an individual to stand for election without unreasonable restrictions. Consequently, the Committee finds that the author's claims are admissible *ratione materiae*, in accordance with article 3 of the Optional Protocol.

7.5 The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, his claims under article 25 of the Covenant. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it in writing by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The issue before the Committee is whether the author's rights under article 25 were violated by his not being allowed to stand as an independent candidate for the parliamentary elections held on 2 October 2010 and 4 October 2014 without having been included in a list of candidates of a political party or an association of political parties.

8.3 The Committee has noted the author's claims under article 25 of the Covenant that he could not be elected in general elections in 2010 and 2014 because the State party's electoral system at the time did not allow him to stand as an independent candidate in parliamentary elections other than by being included in a list of candidates of a political party or an association of political parties registered for the elections in question. In this connection, the Committee also notes that the author had been a member of the Tautas Saskanas Partija and the Social Democratic Party "Saskana", both being political parties, prior to the general elections in 2010 (until April 2010) and that he submitted an individual independent candidature to the Central Election Commission in July 2010, which was rejected. The Committee further notes the author's failed attempts to have the tenants' concerns accommodated by the political parties and to be included in a list of candidates of a political

party for the 2014 parliamentary elections, as the parties included in their lists only their members (except for his inclusion in the list of candidates nominated by the newly formed Latvian Russian Union, none of whose candidates were elected). The Committee also notes that the Latvia Tenants' Association was neither a legally registered political party nor a legally registered association of political parties, and becoming one was not an option, as it was mostly composed of non-citizens.

8.4 The Committee notes that the State party explained that, for independent candidates, it was possible to stand for election by being on one of the lists of parties registered for such elections. The State party also explained that the author could create his own political party together with individuals sharing similar political opinions and stand for election through it. In this connection, the State party noted that the author had not attempted to stand for election as a non-party member by means of inclusion in the list of any party, nor had he explained why he could not create his own political party together with individuals sharing similar political opinions and consequently stand for elections by means of inclusion in the list of such party (paras. 6.6 and 6.7).

8.5 The Committee also notes the author's argument that there was no legitimate reason for excluding the possibility for independent candidates to stand for election alongside candidates on the lists of political parties; that the system entailed an obligation to associate and the undue burden of establishing a party prior to the election; and that his aim was to extend the possibility to individuals to stand as independent candidates alongside those from political parties (paras. 5.8 and 5.9).

8.6 In that regard, the Committee recalls paragraph 17 of its general comment No. 25 (1996), in which it stated that the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. The Committee should then determine whether the limitation inherent in the State party's electoral system that requires candidates to be nominated by political parties or their associations, even as non-party members, is reasonable, in line with the requirements of article 25. The Committee notes the information provided by the State party that the inclusion in the list of political parties does not automatically and necessarily entail being a formal member of that party, and that independent candidates can be put forward as candidates on such lists. In addition, the Committee notes that the author could have established his own political party together with individuals sharing similar political opinions and consequently stand for election by means of inclusion in the list of such party, which would correspond to the proportional party-based electoral system.

8.7 The Committee also recalls paragraphs 4 and 21 of its general comment No. 25 (1996), in which it held that, although the Covenant did not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors, that any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria and that the exercise of these rights could not be suspended or excluded except on grounds which were established by law and which were objective and reasonable. The Committee considers that, in the circumstances of the present case, the author has not established that the restrictions imposed on him in seeking to stand as an independent candidate in parliamentary elections, through the requirements of the electoral system in place at the time, were not in compliance with the provisions contained in article 25 of the Covenant. In particular, those requirements were established in pursuit of the legitimate aim of proportionate parliamentary representation based on the synergy and competition of political parties; provided an option for independent non-party members to run through the lists of candidates proposed by the political parties or their associations; and any corresponding restrictions in the context of the electoral system were objective, proportionate and reasonable.

9. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not reveal any violation by the State party of article 25 of the Covenant.

Annex

[Original: Spanish]

Individual opinion of Committee member Rodrigo A. Carazo (dissenting)

1. Article 25 of the Covenant clearly establishes that every citizen has the right, without unreasonable restrictions, to be elected to public office. Paragraph 17 of the Committee's general comment No. 25 (1996) elaborates on this, specifically stating that the right to stand for election, as established in article 25 of the Covenant, should not be limited unreasonably by requiring candidates to be members of parties. In paragraph 4 it is specified that any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.
2. The author was prevented from even running for an elected position. In adopting these Views, the Committee accepts the validity of the State party's argument that the limitation results from a legislative provision requiring all candidates to run for a political party, which is intended to protect the democratic system by strengthening the political party system, political culture and parliamentarianism. The Committee therefore notes (see para. 8.7) that the restrictions seemed¹ to have the legitimate aim of ensuring proportionate parliamentary representation based on the synergy and competition of political parties, which has clearly become something entirely subjective that favours political parties, thus constituting a violation of the right of individuals to stand for election.
3. In my view, the Committee should have concluded that the author's right under article 25 of the Covenant has been violated.

¹ Modification with respect to paragraph 8.7 with the introduction of the word "seem".