



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3148/2018*, **

<i>Communication submitted by:</i>	A.L. (represented by counsel, Inese Nikulceva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	14 August 2017 (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 March 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2024
<i>Subject matter:</i>	Restrictions on the exercise of two public service positions
<i>Procedural issues:</i>	Admissibility – substantiation of claims; exhaustion of domestic remedies; abuse of the right of submission
<i>Substantive issue:</i>	Right to take part in the conduct of public affairs and to have access to public service
<i>Article of the Covenant:</i>	25 (a) and (c)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the communication is A.L., a national of Latvia born on 26 September 1953. He claims that a security measure imposed on him during criminal proceedings – prohibition on exercising two public service positions – amounts to a violation of his rights under article 25 (a) and (c) of the Covenant. The Optional Protocol entered into force for the State party on 22 September 1994. The author is represented by counsel.

1.2 On 21 May 2018, the State party requested that the Committee consider the admissibility of the communication separately from the merits. On 6 February 2023, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to examine the admissibility of the communication together with its merits.

* Adopted by the Committee at its 141st session (1–23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



Facts as submitted by the author

2.1 The author is a politician and Chair of the Board of the Latvian political party Latvijas un Ventpilsij.¹ In the municipal elections of 3 June 2017, the party won 9 of the 13 seats on Ventpils City Council.² He was first elected Mayor of Ventpils in 1988. He was elected as a member and Chair of Ventpils City Council during the municipal elections held in 1991, 1994, 1997, 2001, 2005, 2009, 2013 and 2017.³ He is also the Chair of the Board of Ventpils Freeport Authority.⁴

2.2 On 3 October 2005, criminal proceedings were initiated against the author. By decisions of 14 March and 27 August 2007,⁵ the author was held criminally liable for several crimes committed in his official public capacity as Chair of Ventpils City Council, namely: performing activities in the interests of persons offering a bribe; accepting and demanding particularly large bribes; participating in property transactions as a public official, although prohibited from such activities due to his official status; forging documents; repeated money laundering as part of an organized group; and providing false information when declaring property. As a security measure, the author was placed in detention. However, on 10 July 2007, the Riga Regional Court revoked that order and placed him under house arrest.

2.3 On 13 August 2007, a prosecutor of the Pretrial Investigation Supervision Department of the Criminal Law Department of the Office of the Prosecutor General, in addition to house arrest and a prohibition on contacting specific persons, decided to impose a prohibition on specific employment.⁶ The prosecutor thus prohibited the author from performing the duties of Chair of Ventpils City Council and Chair of the Board of Ventpils Freeport Authority until the amendment or revocation of the security measure. When adopting the decision, the prosecutor took into account the fact that the author had been charged with crimes and criminal activities committed while occupying official positions within public institutions and considered that, in continuing to perform his duties as Chair of Ventpils City Council and Chair of the Board of Ventpils Freeport Authority, the author could continue to abuse his official status. In the view of the prosecutor, there was sufficient reason to believe that the author, if allowed to continue to occupy those positions, could repeatedly commit criminal activities, perform actions to conceal those activities or interfere with the pretrial investigation. The security measure was deemed to interfere as little as possible with the author's fundamental rights and to be proportionate.

2.4 On 22 February 2008, although the Kurzeme Regional Court revoked his house arrest, it maintained the prohibition on specific employment, along with other security measures.⁷

2.5 On 17 September 2010, the Riga Regional Court rejected the author's request of 19 August 2010 to revoke the prohibition on specific employment.⁸ The Court held that the security measure, provided for by section 243 (1) of the Code of Criminal Procedure, was proportionate given the character and gravity of the criminal offences, and had not been applied for an unjustifiably long time, given the complexity of the case and the number of

¹ "For Latvia and Ventpils"; Ventpils is the sixth largest city in Latvia.

² According to the Latvian voting system, although the voting in municipal elections refers to lists of political parties and electoral associations, the voters may put an "+" against individual candidates or strike them out. In the 2017 municipal elections, the author received the highest number of "+" marks (3,914), as well as the highest number of votes (10,235), calculated on the basis of actual votes "for" plus "+" marks, less "strike outs".

³ The Chair of Ventpils City Council is elected by the members of the Council; the author was re-elected as Chair throughout this period of time.

⁴ The author was appointed by the Ventpils City Council to the Board of Ventpils Freeport Authority and was elected as its Chair. The Ventpils Freeport Authority is a legal person governed by public law; hence the members of its Board hold public service positions.

⁵ The decisions are not on the file, and it is not clear which authority issued those decisions.

⁶ According to the author, that decision was not subject to appeal.

⁷ Placement under police supervision; prohibition on contacting certain persons; prohibition on changing residence; prohibition on leaving the country without permission; and prohibition on participating in demonstrations, public meetings, street processions, pickets and gatherings. That decision was final and therefore no appeal was possible.

⁸ According to the author, that decision was not subject to appeal.

witnesses. On 22 May 2012, 15 September 2014 and 7 June 2016, the Riga Regional Court rejected further requests to revoke the prohibition on specific employment.⁹

2.6 Following a further request on 11 January 2017 to revoke the security measure, the Riga Regional Court decided, on 30 January 2017, to maintain the prohibition on specific employment. The author argued that the law stipulated that that measure must be set for a certain period, whereas the wording of the decision of 13 August 2007 – “until the security measure is amended or cancelled” – could not be considered as setting a time, because time is calculated in hours, days, months or years. The author submitted that the law did not provide for such a form of calculating time, that is, as the occurrence of a certain event, and he argued that article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) had been violated, claiming that, when the arguments of the parties were clear and substantiated, the court must provide them with answers. The Riga Regional Court considered that the security measure was proportionate and that its choice and grounds for application were in compliance with the requirements stipulated in law, as well as the charges against the author. The Court also considered that the measure ensured that the author would not continue his actions until a final judgment had been delivered in his case. The Court held that the measure was not applied for an unjustifiably long period of time, neither was its length disproportionate nor an infringement of the author’s fundamental rights to such an extent as to amount to a violation of the European Convention on Human Rights.

2.7 On 15 May 2017, the author submitted a complaint to the Constitutional Court, arguing that the legal norm that allowed for the prohibition on specific employment to be applied without a periodic judicial review of its necessity and without a time limit was against the constitutional right to participate in the work of the State and of local government, and also against the right to freely choose employment and a workplace. He claimed that the measure was applied without a time limit and without a reasonable link to the offence. On 29 June 2017, the Constitutional Court decided not to open a case, considering that it was not allowed to reassess the application and interpretation of legal norms, and that it had not been established that the alleged non-compliance of the contested norm with the provisions of the Constitution would cause an infringement of the fundamental rights of the author. It also held that the authority that imposed the security measure was competent to decide on its duration and observed that, although the author had contested that measure several times, the courts had decided that it was necessary and proportional.

Complaint

3.1 The author submits that the security measure that prohibits him from fulfilling the duties of Chair of Ventspils City Council and Chair of the Board of Ventspils Freeport Authority is a restriction on his right enshrined in article 25 (a) and (c) of the Covenant to take part in the conduct of public affairs and to have access to public service.

3.2 While admitting that the right provided for under article 25 of the Covenant is not absolute, the author considers that the prohibition on exercising the two positions is not in accordance with the Code of Criminal Procedure. First, it is not time bound as it can only be revoked through an amendment or formal revocation of the security measure. Second, when deciding to maintain that measure, the Latvian courts did not mention facts that suggested that the author would interfere with the criminal proceedings or engage in new criminal activities. Third, the security measure has not been applied or even proposed by the person leading the criminal proceedings, or by an investigating judge through a reasoned written decision, but was applied by the Kurzeme Regional Court on 22 February 2008 as an appellate court, on its own initiative, when it considered his complaint regarding house arrest.

3.3 The author considers that the measure has no objective and reasonable grounds because it does not pursue a legitimate aim – not to interfere with the investigation and not to commit new criminal offences – and does not conform to the principle of proportionality. None of the court decisions contains a compelling justification for the necessity of the security measure. Moreover, at the time of the submission of the initial communication, the

⁹ According to the author, those decisions were not subject to appeal.

measure has been in force for 10 years – although he had not been found guilty and had not been sentenced – which is unreasonably long.¹⁰

3.4 Lastly, the author claims that Latvian law does not provide for fair proceedings in the event of the imposition and review of the prohibition on specific employment. Thus, such a significant restriction of rights was requested by a single person – a public prosecutor – and is not subject to periodic judicial review.¹¹ The author considers that each court decision must justify in detail the need for continued application of the prohibition on specific employment. However, in his case, the courts decided periodically on the revocation of the security measure, but only because the author requested them to do so.

State party's observations on admissibility

4.1 On 21 May 2018, the State party requested that the Committee examine the admissibility of the communication separately from the merits and argued that the author's claims were inadmissible as a result of the abuse of the right of submission, *res judicata*,¹² *litis pendens*, failure to exhaust all available domestic remedies and lack of substantiation of the claims under article 25 (a) and (c) of the Covenant.

4.2 The State party asserts that the matter raised in the present communication was also raised shortly afterwards before the European Court of Human Rights.¹³ The State party also states that the author has applied to the European Court of Human Rights on 10 occasions regarding that issue.¹⁴ The State party thus argues that the European Court of Human Rights has decided on the issue already, that the Court is presently deciding again on the same matter presented before the Committee, and that the author has abused his right of submission by failing to disclose his pending application before the European Court of Human Rights to the Committee.

4.3 The State party argues that the author has not exhausted all available domestic remedies provided for in the Code of Criminal Procedure, since he has not appealed against the prosecutor's decisions of 13 August 2007 and 29 July 2008 to a higher-level prosecutor, he has also not used the opportunity to challenge the imposed security measure more regularly than every two years, or together with the final judgment,¹⁵ and because the author did not use the opportunity to reapply to the Constitutional Court. However, the State party admits that the trial court on several occasions evaluated the need for the application of the security measure against the author from various perspectives, showing that the national authorities have thoroughly analysed every submission before deciding on the continuation of the security measure. It also argues that the Committee is not competent to reassess the facts and evidence, unless the national authorities' assessment was clearly arbitrary or

¹⁰ The author explains that, under the criminal law, prohibition on holding a certain position or performing certain activities may be applied as an additional criminal sentence, from one to five years (Penal Code, art. 44). Thus, limitation of that right even as a criminal sentence may not be longer than five years, which means that a security measure – applied to persons who have not been found guilty of a criminal offence – for a longer period cannot be reasonable and proportionate. The nature and complexity of the proceedings are reflected in para. 6.16.

¹¹ The Code of Criminal Procedure provides for the review of the necessity of further application of security measures only in respect of those related to deprivation of liberty, that is arrest and house arrest.

¹² A reference was made to the European Court of Human Rights.

¹³ The application to the European Court of Human Rights was submitted on 22 August 2017 regarding the author's "inability to hold the position of Chairperson of Ventspils City Council after being elected". See European Court of Human Rights, *Lembergs v. Latvia*, application No. 62323/17, Decision, 11 October 2018.

¹⁴ As regards the same matter, the State party argues that the present communication is inadmissible given the case law of the Committee in *Karakurt v. Austria* (CCPR/C/74/D/965/2000); *V.O. v. Norway*, communication No. 168/1984; *Rogl v. Germany* (CCPR/C/70/D/808/1998); *Šroub v. Czech Republic* (CCPR/C/97/D/1573/2007); and *M.G. v. Poland* (CCPR/C/114/D/2183/2012).

¹⁵ The decision, on 30 January 2017, of the court of first instance on the application of the security measure was still subject to appeal.

amounted to a denial of justice.¹⁶ Moreover, several other security measures applied in the case have been gradually revoked, thus demonstrating that domestic remedies are effective.

4.4 Lastly, the State party claims that the author has not substantiated his claims of violations of article 25 (a) and (c) of the Covenant. The State party asserts that, because the author was able to participate and be elected in municipal elections while the security measures were in place, his rights under article 25 (a) and (c) have not been violated.

Author's comments on the State party's observations on admissibility

5.1 On 17 August 2018, the author submitted his comments to contest the State party's arguments on admissibility.

5.2 Regarding his failure to inform the Committee of his application to the European Court of Human Rights of 22 August 2017, the author contends that the matters raised before the Court and the Committee are different. The author states that, while the present communication is related to his right to take part in public affairs and services, the application before the Court concerns interference with his voting rights,¹⁷ thus dismissing the objection of abuse of the right of submission. Furthermore, because all 10 of his applications to the Court have been dismissed as inadmissible, the author considers that the present matter has not been considered by another procedure of international investigation.¹⁸

5.3 The author argues that the prosecutor's decisions were not subject to appeal under section 337¹⁹ of the Code of Criminal Procedure on the basis of the text of the prosecutor's previous decision.²⁰ Furthermore, the author states that he did appeal to the Constitutional Court, however, it refused to open a case on 15 May 2017. For those reasons, the author contends that he has exhausted all available domestic remedies.

5.4 The author also refutes the State party's claim that he has not substantiated his claims in relation to violations of article 25 (a) and (c). The author argues that he has provided sufficient evidence for his claims that he is prohibited from fulfilling his duties as Chair of Ventspils City Council and Chair of the Board of Ventspils Freeport Authority, thereby substantiating his claims that his rights under article 25 (a) and (c) have been violated.

5.5 On 12 October 2018, the author supplemented his comments of 17 August 2018, informing the Committee that, on 11 October 2018, the European Court of Human Rights had adopted a decision on application No. 62323/17, declaring his application inadmissible.²¹

5.6 On 23 November 2018, the author provided additional information. According to the letter of the European Court of Human Rights dated 15 November 2018 that he submitted to the Committee, the author had lodged, in the period before May 2018, 10 applications to the Court;²² all of which had been found to be incompatible with the requirements of rule 47 of

¹⁶ *Simms v. Jamaica* (CCPR/C/53/D/541/1993).

¹⁷ The application before the European Court of Human Rights was made regarding a violation of article 3 of Protocol No. 1.

¹⁸ The author references *J.P.D. v. France* (CCPR/C/115/D/2621/2015), para. 4.3.

¹⁹ Under section 337, the Code states that a person can appeal the prosecutor's decision to a higher-ranking prosecutor. Inclusion of that section seems to run counter to the author's argument. See <https://www.vvc.gov.lv/en/laws-and-regulations-republic-latvia-english/kriminalprocesa-likums-ar-grozijumiem-lidz-05102023>. Section 262 (2), however, states that the author should have appealed to the investigating judge to have the security measure lifted.

²⁰ The author submits that the prosecutor's decision stated that: "The prohibition on specific employment may be appealed ... according to the procedure set out in section 262 (2) of the Code of Criminal Procedure by submitting a complaint to the investigating judge of the City of Riga Central District Court."

²¹ The Court explained that article 3 of Protocol No. 1 to the European Convention on Human Rights was not applicable as the city and municipal councils of Latvia did not exercise legislative power and did not therefore form part of the "legislature" within the meaning of the article referred to.

²² Applications Nos. 40612/08, 43568/12, 26168/13, 26171/13, 73846/14, 35671/17, 45118/17, 55175/17, 62323/17 and 80439/17.

the Rules of Court²³ or had been declared inadmissible, thus they are no longer pending before the Court.

State party's additional observations

6.1 On 6 June 2023, the State party submitted additional observations on admissibility and the merits.

Admissibility

6.2 The State party reiterated its observations, of 21 May 2018, on admissibility. As regards the author's abuse of the right of submission, the State party reasserts that an identical complaint by the author as that before the Committee has been examined in parallel by the European Court of Human Rights.²⁴ The State party objected to the author's misrepresentation that his complaint before the Court allegedly overlapped with the rights protected by article 25 (b) of the Covenant, and not article 25 (a) and (c). In its view, the author's application under article 3 of Protocol No. 1 to the European Convention on Human Rights (application No. 62323/17) concerned the lawfulness and proportionality of the imposed security measure, which prohibited him from holding the position of Chair after being elected, despite the substantial support of the electorate. The author concealed from the Committee information about the pending application before the Court, both in his communication and his additional comments, failing to inform the Committee of parallel proceedings and maintaining that the complaints were completely different. Therefore, the author's communication amounts to an abuse of the right of submission, under article 3 of the Optional Protocol. However, the State party admits that the present communication does not concern the same matter in the context of article 5 (2) (a) of the Optional Protocol, referring to the Committee's jurisprudence, as article 25 (b) and (c) has no equivalent in the European Convention on Human Rights and its Protocols as regards access to public office other than the legislature.²⁵

6.3 The State party points to the decision of the European Court of Human Rights of 11 October 2018, in which the Court rejected the author's application (No. 62323/17) under article 3 of Protocol No. 1 to the European Convention on Human Rights (right to free elections) as inadmissible. The Court found that the author's complaint about his inability to hold the position of Chair of Ventspils City Council after being elected was incompatible *ratione materiae* with the provisions of the Convention.²⁶ As regards the present case, the State party asserts that article 25 of the Covenant does not guarantee a right for the author to take up a specific post or exercise managerial functions in public service and therefore the author's complaint essentially falls outside the scope *ratione materiae* of article 25 of the Covenant, and should be rejected as inadmissible, under articles 2 and 3 of the Optional Protocol. Recalling the Committee's case law, the State party also suggested rejecting the author's arguments concerning general application of the law, appearing as *actio popularis*.

6.4 In addition, on 22 February 2021, the Riga Regional Court, acting as a court of first instance, found the author guilty of accepting bribes, falsification and forgery of official documents, laundering of the proceeds of crime, unlawful participation in property transactions and intentional provision of false information in a declaration of income. He was

²³ This rule concerns formal requirements regarding the contents of an individual application.

²⁴ On 22 August 2017, the author lodged an application before the Court alleging a violation of his rights under article 3 of Protocol No. 1 to the European Convention on Human Rights, which was signed on 24 July 2017. A week earlier, on 14 August 2017, the author lodged the present communication.

²⁵ *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012), para. 7.3; and *Jagminas v. Lithuania* (CCPR/C/126/D/2670/2015), para. 7.2.

²⁶ The author submitted that the voters had made their choice by electing the author's party in the municipal elections and that polls show their desire to see the author as Chair of Ventspils City Council. However, the security measure prohibited him from holding the office after being elected, thus constituting a violation of article 3 of Protocol No. 1. The Court considered that, in Latvia, the city and municipal councils, as well as the Chairs of such councils, did not exercise legislative power and did not form part of the "legislature" within the meaning of article 3 of Protocol No. 1. The Court concluded that article 3 of Protocol No. 1 was not applicable in the present case.

acquitted on charges of exceeding his official authority and abuse of an official position.²⁷ The criminal proceedings in the author's case are currently pending before the court of appeals.²⁸

Merits

6.5 As regards the merits, the author, first, argues that the alleged interference with his rights under article 25 (a) and (c) of the Covenant was not established by law. He claims that the decisions by the prosecutors and then the domestic courts allegedly failed to identify a specific date until which the security measure under section 254 of the Code of Criminal Procedure would be in force, and the decisions allegedly lacked sufficient reasoning for the imposition of the security measure as such. Second, the author submits that the security measure did not have objective and reasonable grounds as such. In his view, it had not been established during the criminal proceedings that the author had interfered with the criminal proceedings or attempted to recommit the crimes that he had been charged with. Third, the author holds that there was no periodic review of the security measure by a judicial authority and, therefore, its imposition did not involve fair proceedings.

6.6 The State party recalls the Committee's case law that the exercise of the rights recognized in article 25 of the Covenant, including the right to stand for election, may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable.²⁹ The Committee has also held that the right provided for by article 25 is not an absolute right and that restrictions of this right are allowed as long as they are not discriminatory or unreasonable.³⁰

6.7 The State party submits that there has been no interference with the author's rights under article 25 (a) and (c) of the Covenant and that, even if the Committee were to disagree, the alleged interference was established by law, was objectively necessary and proportionate, and that there are sufficient safeguards in the State party's law to ensure that the prohibition on specific employment complies with the requirement in relation to reasonableness under article 25. The State party underlines that the present communication does not concern a prohibition on continuing or taking up functions as an elected official of a city council.³¹ The present case is limited to the prohibition on carrying out the functions of Chair, namely the functions of a managerial position, of Ventspils City Council and the Board of Ventspils Freeport Authority. As a result of the impugned security measure, the author has never been denied his rights to take part in the meetings of the local government authority, to vote or to express his views during the debates of the council meetings. He has also never been prevented from acting as a member of the Board of Ventspils Freeport Authority.³²

6.8 As regards the alleged interference with the author's rights, the State party recalls that the rights enshrined in article 25 refer only to the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service.³³ However, nothing in the practice of the Committee suggests that the right to retain public office refers to a right to retain a managerial position or a specific office,³⁴ and the author has not provided any evidence to the contrary. The "executive office", as referred to in general comment No. 25 (1996), concerns the branch of the government, instead of an

²⁷ The author was sentenced to a five-year prison term, together with confiscation of property and a fine of 20,000 euros. See also para. 7.3 below.

²⁸ No further information has been provided regarding the outcome of the appeal proceedings.

²⁹ General comment No. 25 (1996), paras. 3, 5 and 6. See also *Bandaranayake v. Sri Lanka* (CCPR/C/93/D/1376/2005), paras. 7.1 and 7.3; and *Jagminas v. Lithuania*, para. 8.2.

³⁰ *Debreczeny v. Netherlands* (CCPR/C/53/D/500/1992), para. 9.2. See also general comment No. 31 (2004), para. 6.

³¹ In the latest municipal elections in Latvia, on 5 June 2021, the author stood as a candidate for the For Latvia and Ventspilij party. The author was elected to Ventspils City Council, although not as its Chair. He currently works on the Committee for Social Issues, the Budgetary and Economics Commission and the City Development and Environmental Commission of Ventspils City Council. He is also the Chair of the For Latvia and Ventspilij political party.

³² The author is no longer Chair of the Board of Ventspils Freeport Authority.

³³ General comment No. 25 (1996), para. 1.

³⁴ *Albareda et al. v. Uruguay* (CCPR/C/103/D1637/2007, 1757/2008 and 1765/2008), para. 8.3.

executive, that is, a managerial position. The State party maintains that article 25 does not confer upon individuals a right to retain a managerial position in the public service but refers only to general access to a position in the public service. In its Views in *Kall v. Poland*, the Committee concluded that the rights protected by article 25 (c) of the Covenant did not confer upon every citizen the right to obtain guaranteed employment in the public service.³⁵

6.9 The cases that are partly similar to the present one³⁶ relate either to a long-term or permanent prohibition on standing for elections, or a dismissal from public service as such, and not just demotion or a prohibition on exercising certain functions in the public service. The practice of the Committee does not go as far as establishing a right to a specific post or retention of that post. During the entire investigation and adjudication of the criminal proceedings against the author, including after his conviction and pending his appeal, the author has stood for municipal elections and has also been elected. Currently, the author takes part in the conduct of public affairs as an elected official of the municipal authority. The author's argument that the results of the municipal elections confirm that the electorate allegedly wanted the author to be Chair of Ventspils City Council is unfounded, also since there is no interference with the author's rights.

6.10 As for the alleged incompatibility of the imposed security measure with the provisions of the Code of Criminal Procedure, the author has submitted that the aim of a security measure, as set out in section 241 of the Code, is to preclude the accused from acting to obstruct or hinder the criminal proceedings, the investigation or the achievement of the aims of the criminal proceedings. The State party has agreed with the author's statement to the effect that the prohibition on specific employment is one of the security measures that can be imposed in criminal proceedings, for a certain period of time.³⁷ The notion of "a certain period of time" does not refer to a specific time frame in the sense of days or months, but to the fact that its duration can be linked to a decision of the criminal authorities. The date of the lifting of such a measure is not always specified, which is sometimes the practice, based on national case law, in situations in which the impugned security measure is applied to individuals who have been charged with a crime that was allegedly committed while they were in public office. The restrictions imposed on the author when he served as Chair of Ventspils City Council and Chair of the Board of Ventspils Freeport Authority were directly connected to the functions that are carried out by the Chair of these authorities and the context of the criminal proceedings brought against him. The notion of a "certain period of time" in the context of the security measure provided for under section 254 of the Code of Criminal Procedure in view of its aim foresees that it can be applied until the completion of the criminal proceedings, if necessary.

6.11 The State party argues that the alleged interference is lawful and complies with the provisions of the Code of Criminal Procedure and the case law of domestic courts. It also argues that the decisions of the prosecutor, acting as the person directing the criminal proceedings, and of the domestic courts were sufficiently grounded in the author's own actions, the nature of the criminal charges against him and the potential for the author to obstruct those proceedings. In addition, the particular security measure was the most lenient security measure, rather than detention or house arrest, among those requested by the prosecution to achieve the aims of the criminal proceedings.

6.12 As regards the author's argument that the decision to impose the security measure did not pursue any legitimate aim and there were no objective grounds for its imposition, the State party disagrees and recalls that security measures are imposed during the investigation and adjudication of crimes to ensure that individuals do not obstruct criminal proceedings, attempt to influence victims or witnesses, avoid criminal proceedings or recommit crimes that they are charged with. In criminal proceedings that pertain to alleged crimes committed in public office, the security measures must be applied to prevent recommitment of such crimes. Hence, a decision not to impose a security measure that would prevent the author from continuing to exercise his functions as Chair of Ventspils City Council and the Chair of

³⁵ *Kall v. Poland* (CCPR/C/60/D/552/1993), para. 13.2.

³⁶ *Paksas v. Lithuania; Jagminas v. Lithuania; Maldonado Iporre v. Plurinational State of Bolivia* (CCPR/C/122/D/2629/2015); and *Bandaranayake v. Sri Lanka*.

³⁷ Sections 243 (1) (3) and 254 (1) and (2) of the Code of Criminal Procedure.

the Board of Ventspils Freeport Authority would be irresponsible on the part of the authorities and would go against the need to preserve public order.³⁸ The imposition of the security measure was hence legitimate.

6.13 The State party notes the author's assertions that the alleged interference was disproportionate as it lacked reasons for the security measure, that it was not the least intrusive measure to achieve the aim of the criminal proceedings, that the security measure has been applied for a disproportionately long period of time and that there were no adequate procedural safeguards available to the author to protect his rights under article 25 of the Covenant as there was no judicial control over the imposed security measure. The State party reiterates that the alleged interference with the author's rights was proportionate to the legitimate aim pursued and reasonable as the authorities provided sufficient grounds for the application and maintenance of the security measure, which were in line with the standing practice of the domestic courts. In addition, there were no less restrictive measures than the one imposed on the author that would achieve the legitimate aim pursued. The length of the application of the security measure, in view of the complexity of the criminal proceedings and the diligence adopted by the authorities, was also proportionate, and the author had sufficient procedural safeguards to protect his rights.

6.14 The security measure was first applied by the Kurzeme Regional Court on 22 February 2008 as the least intrusive measure requested by the prosecution, compared with house arrest or detention, that had been previously imposed on the author. Similarly, the subsequent decisions by the prosecutorial and judicial authorities found that the security measure was necessary and proportionate, considering that, in several instances, the author had violated the security measures that had been previously imposed on him. The imposition of the security measure was hence confirmed several times both by prosecutorial and judicial authorities.

6.15 The State party adds that there were no less restrictive security measures available. In addition, the author was also prohibited from contacting specific individuals and leaving the country. Since the charges against the author were directly linked to his functions as Chair of Ventspils City Council and Chair of the Board of Ventspils Freeport Authority, the only measures that were available to the authorities to prevent possible recommitment of offences were detention, house arrest or prohibition on specific employment. In fact, the Court rejected the request of the prosecutor to continue the author's detention and imposed the impugned security measure. Since the author has not provided any information about other security measures, the Committee is requested to conclude that there were no less restrictive measures available.

6.16 The State party refers to applicable legislation that limits the right to apply and exercise roles in local administrative bodies or companies in which the State participates if an individual has been convicted of a criminal offence.³⁹ The comparison drawn by the author with respect to the sanction that may be imposed on him as a result of his conviction is irrelevant since the present case concerns a security measure imposed during a criminal investigation. In any event, if the author were to be found guilty, he would be prohibited from standing as a candidate in local government elections and could not even become a member of the Board of Ventspils Freeport Authority. Although the author's criminal case is very complex, with extensive evidence and hearings, and the proceedings took more than a decade before a judgment was handed down by a court of first instance, the State party holds that the investigation into and the adjudication of the case were not prolonged. The proceedings were conducted with diligence, the courts held hearings regularly and frequently, and they examined a significant number of motions from the author and the prosecution, including with respect to the author's request to alter the security measures imposed on him. The State party concludes that the fact that the security measure was imposed on the author for more than a decade, in view of the charges brought against him and the complexity of the trial, cannot be considered an unreasonable restriction under article 25 of the Covenant.

³⁸ *Jagminas v. Lithuania*, paras. 4.9, 7.5 and 8.5.

³⁹ Article 9 of the Act on Election of Local Government Councils and article 37 of the Act on Governance of Capital Shares of a Public Person and Capital Companies.

6.17 The State party reiterates that the security measure, which was limited in its scope, did not preclude the author from participating in the conduct of public affairs and did not remove him from public office per se; it was a proportionate measure that the domestic authorities of the State party imposed on the author to achieve the aims of the criminal proceedings. Contrary to what the author suggests, neither was his career disproportionately affected, as he was and still is the leader of the Union of Greens and Farmers party. Despite the criminal charges against him, and the fact that he had been convicted by a court of first instance, he was chosen by the party as their candidate for prime minister in the 2022 parliamentary elections.

6.18 Lastly, the author had procedural avenues and safeguards during the investigation and adjudication of his criminal proceedings to challenge the security measure, pursuant to sections 336, 337 and 496 of the Code of Criminal Procedure. The author did indeed lodge such complaints and requests. The effectiveness of those avenues was confirmed by the assessment of the Supreme Court. Moreover, the author's argument about the need for a periodic judicial review of the security measure is also unfounded since the argued restrictions in domestic law on the author's freedom, that is detention, house arrest or a prohibition on leaving the country, are not applicable in the present case.⁴⁰ The States parties to the Covenant retain a certain level of discretion in the choice of the review mechanisms available for individuals as regards access to and restrictions on appointment, promotion, suspension, dismissal or removal from public office. Nothing in the practice of the Committee suggests that there should always be a judicial review of a restriction on the right to access and perform public service. Moreover, the State party reiterates that the security measure imposed on the author was limited in its scope and initially imposed by the Kurzeme Regional Court as the least restrictive measure to achieve the aims of the criminal proceedings. At no point was the author actually prevented from acting as a member of the local government council or the Board of Ventspils Freeport Authority. He also had the right to challenge the security measure before the domestic courts during the adjudication of his case, which he did.

Additional comments from the author

7.1 On 25 August 2023, the author submitted additional comments on the State party's observations, clarifying some facts.

7.2 As explained in the initial communication, the author is a politician, a member and the Chair of the Board of the For Latvia and Ventspils party. The State party correctly admitted that he was the Chair of that political party. However, the author has never been the leader of the Union of Greens and Farmers party.

7.3 After the initial submission of the communication, municipal elections took place on 5 June 2021. The For Latvia and Ventspils party won 7 of the 13 seats on Ventspils City Council. Although the author received the largest number of "+" marks and the greatest number of votes, he was not elected as Chair of Ventspils City Council. The author held the position of Chair of Ventspils City Council until 5 July 2021. In the criminal proceedings, in which the security measure was imposed on the author, the court of first instance – the Riga Regional Court – sentenced the author in its judgment of 22 February 2021. The author was convicted of taking bribes, money laundering, falsification of documents, unlawful participation in property transactions and avoiding a tax declaration. He was sentenced to five years in prison, confiscation of property and a fine of 20,000 euros. He was acquitted on the remaining charges.

7.4 The author appealed the judgment, which has not entered into force, of the Riga Regional Court. The Court also decided to revoke the prohibition on specific employment and to replace it with detention and, subsequently, bail (from 22 February 2022). As the author paid the bail, he left prison on 25 February 2022. The prohibition on carrying out the duties of Chair of Ventspils City Council was imposed on the author between 13 August 2007 and 22 February 2021 and between 25 February 2022 and the present day. The author was prohibited from carrying out his duties as elected Chair of Ventspils City Council between

⁴⁰ The State party referred to general comment No. 25 (1996), para. 24.

13 August 2007 and 5 July 2021 (for almost 14 years). The author was Chair of the Board of Ventspils Freeport Authority until 10 December 2019. The prohibition on carrying out the duties of Chair of the Board of Ventspils Freeport Authority was imposed on the author between 13 August 2007 and 10 December 2019 (for more than 12 years).

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 As regards article 5 (2) (a) of the Optional Protocol, the Committee notes the State party's objection that the author has submitted 10 applications on the same issue to the European Court of Human Rights, all of which were rejected as inadmissible.⁴¹ The Committee notes the author's assertion that the applications to the Court did not concern the same matter, arguing that the claims in the last application concerned article 3 of Protocol No. 1 to the European Convention on Human Rights, which are different from the claims before the Committee. The author has argued that all 10 of his applications to the Court have been dismissed as inadmissible and that he has no pending application before the Court, which rejected the author's last application as inadmissible on 11 October 2018 (see para. 6.3 above). The Committee considers that, since the same matter is not at present being examined under another procedure of international investigation or settlement, it is not precluded from considering the author's claims by the requirements of article 5 (2) (a) of the Optional Protocol.

8.3 The Committee also notes the State party's objection that the author has not exhausted all available domestic remedies, arguing that the prosecutor's decisions on security measures in relation to detention, restriction of movement and prohibition on specific employment could have been appealed to a higher-ranking prosecutor or investigating judge or challenged on appeal in the context of a final court judgment, and that the author could have also reapplied to the Constitutional Court. The Committee notes the author's response that the prosecutor's decisions on security measures could not be appealed to a higher-ranking prosecutor pursuant to the Code of Criminal Procedure and that those decisions were regularly appealed to the Riga Regional Court, which repeatedly confirmed their application through decisions that could not be appealed. The Committee also notes that the author submitted a complaint to the Constitutional Court, which refused to consider it as it concerned the application of domestic legislation, and the allegations therein were not substantiated. In those circumstances, the Committee considers that the author has exhausted the domestic remedies that were available, pursuant to the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 The State party has further argued that the author abused his right of submission since he withheld information from the Committee concerning his applications that were pending before the European Court of Human Rights at the time of submission of the initial communication, and the last application to the Court, which was submitted several days after the date of the present communication. The Committee notes the author's explanation that the applications before the Court did not concern the same matter, as the claims under article 3 of Protocol No. 1 to the European Convention on Human Rights are distinct from the claims under article 25 (a) and (c) of the Covenant. Although the Committee finds it regrettable that the author failed to inform the Committee at the outset that he had submitted and intended to submit complaints to the Court, in parallel to his communication to the Committee concerning the same events, while noting, in other circumstances, that such a failure to notify could amount to an abuse of the right of submission, it nevertheless observes the State party's

⁴¹ In its decision of 11 October 2018, the European Court of Human Rights rejected the author's application (No. 62323/17) under article 3 of Protocol No. 1 to the European Convention on Human Rights (right to free elections) as incompatible *ratione materiae* with the Convention. Article 3 of Protocol No. 1 requires that States parties hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature.

admission that the present communication ultimately does not concern the same matter, in the sense of article 5 (2) (a) of the Optional Protocol, since article 25 (b) and (c) has no equivalent in the European Convention on Human Rights and its Protocols as regards access to public office other than in the context of the legislature (see para. 6.2 above). Therefore, the Committee considers that it is not precluded from considering the author's claims by the requirements of article 3 of the Optional Protocol.

8.5 Having been prohibited from carrying out the duties of Chair of Ventspils City Council and the Board of Ventspils Freeport Authority, the author argues that: (a) the alleged interference with his rights under article 25 (a) and (c) was not established by law and was neither necessary nor proportionate; (b) the security measure was not based on objective and reasonable grounds; and (c) there was no periodic review of the security measure by a judicial authority and, therefore, its imposition did not include fair proceedings. The issue before the Committee is therefore whether the imposition of the prohibition on specific employment during the criminal investigation and trial has violated the author's rights under article 25 (a) and (c) of the Covenant to take part in the conduct of public affairs and to have access to public service.

8.6 As regards the alleged interference, the author has claimed that the decisions by the prosecutors and the domestic courts (Riga Regional Court) failed to identify a specific date until which the security measure against him, under section 254 of the Code of Criminal Procedure, would be in force, and that the decisions lacked sufficient reasoning for the imposition of the security measure. The Committee notes the State party's objection to admissibility for lack of sufficient substantiation of those claims of the author. The State party has argued that there has been no interference with the author's rights under article 25 (a) and (c) of the Covenant; or, alternatively, that the interference was established by law, was objectively necessary and proportionate, and that there are sufficient safeguards in its law to ensure that the security measure complies with the reasonableness requirement under article 25. The State party has also held that the present communication does not concern a prohibition on continuing or taking up functions as an elected official of a city council, as it concerns the prohibition on carrying out managerial functions, such as Chair of Ventspils City Council and Chair of the Board of Ventspils Freeport Authority. Furthermore, the State party has submitted that the author has not been denied, during the entire investigation and adjudication of the criminal proceedings against him, including after his conviction and pending his appeal, his rights to take part in the meetings of the local government authority and to vote or express his views during the debates of the council meetings; and he has never been prevented from acting as a member of the Board of Ventspils Freeport Authority. The State party has also argued that the author continued to serve on several expert committees of Ventspils City Council.

8.7 The Committee recalls its jurisprudence that any conditions that apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.⁴² The Committee recalls its jurisprudence that the exercise of the rights recognized in article 25 of the Covenant, including the right to stand for election, may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable.⁴³

8.8 The Committee notes the author's claims that the interference was disproportionate as it: lacked reasons for the impugned security measure; and was not the least intrusive measure to achieve the aim of the criminal proceedings. Also, the security measure has been applied for a disproportionately long period of time, and there were no sufficient procedural safeguards available to the author to protect his rights under article 25 of the Covenant, because there was no judicial control over the imposed security measure. The State party has objected that such restrictions were proportionate, compatible with criminal procedure and legitimate, as they can be applied until the completion of the criminal proceedings, if necessary. The State party has emphasized that the decisions of the prosecutor, acting as the person directing the criminal proceedings, and the domestic courts were sufficiently grounded in the author's own actions, the nature of the criminal charges against him, and the potential for the author to obstruct the criminal proceedings; and the particular security measure was imposed as the most lenient security measure, instead of detention or house

⁴² General comment No. 25 (1996), para. 4.

⁴³ *Ibid.*, paras. 5 and 6.

arrest, among those requested by the prosecution to achieve the aims of the criminal proceedings.

8.9 In that context, the Committee observes that the security measure, which is directly connected to the functions that are carried out by the Chair of the authorities concerned and the particular criminal proceedings brought against the author, was first applied by the Kurzeme Regional Court on 22 February 2008 as the least intrusive security measure requested by the prosecution, compared with house arrest or detention, among those that had previously been imposed on the author. The Committee also observes that the prosecutorial and judicial authorities subsequently found that the security measure continued to be necessary and proportionate, considering that, in several instances, the author had violated other security measures that had previously been imposed on him, and that no less restrictive security measures were available (see para. 6.14 above).

8.10 As regards the author's allegation that the security measure was imposed for a prolonged period and was unreasonable, the State party underlined that the author's criminal case was very complex, with extensive evidence and hearings. Although the proceedings have taken almost 14 years for a judgment by a court of first instance to be pronounced, the State party has denied that the investigation and adjudication of the case were prolonged. The Committee notes the State party's assertion that the proceedings were conducted with diligence, the courts held hearings regularly and frequently and they examined a significant number of motions from the author and the prosecution, including with respect to the author's request to alter the security measures imposed on him. This part of the author's claims concerns the assessment of the facts and evidence by the national criminal justice authorities. The Committee notes that the author has not established that such an assessment was arbitrary or amounted to a denial of justice. The Committee therefore considers that no specific reasons have been presented to reassess the imposition of a security measure that represents *prima facie* an objective and reasonable restriction under article 25 of the Covenant. As such, that part of the author's claims is inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

8.11 Regarding the author's claim regarding the imposition of the security measure without proper judicial guarantees, the State party argued that the author had procedural avenues and safeguards during the investigation and adjudication of his criminal proceedings to challenge the imposed security measure, from which he repeatedly benefited. The effectiveness of those avenues was supported by the assessment of the Supreme Court on file. In that context, the Committee observes that the security measure imposed on the author was limited in its scope and was initially imposed as the least restrictive measure to achieve the aims of the criminal proceedings. The Committee also observes that the imposition of the security measure was regularly reviewed by domestic courts; the matter has also been before the Constitutional Court; and the author was not actually prevented from acting as a member of Ventspils City Council or the Board of Ventspils Freeport Authority. The Committee considers that the State party's authorities took into account all the elements available, in particular the gravity of the criminal charges against the author, which related to his executive roles in the public authorities. The Committee finds that, while the author disagrees with the conclusions of the State party's authorities regarding the assessment of the facts and evidence in support of his claims, the information before the Committee does not allow it to conclude that the assessment by the State party's authorities was clearly arbitrary or amounted to a manifest error or denial of justice. Accordingly, the Committee concludes that the author has failed to substantiate his claims related to the lack of procedural avenues and safeguards to challenge the imposition of the security measure, in violation of article 25, for the purposes of admissibility and that those claims are inadmissible, in accordance with article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.